



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

JUN - 4 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Walker
Summit Processors, Inc.
200 East Alton Avenue
East Alton, Illinois 62024

Dear Mr. Walker:

Enclosed are a file-stamped Consent Agreement and Final Order (CAFO) and Administrative Consent Order (ACO) which resolve *In the Matter of Summit Processors, Inc.*, docket no. CAA-05-2014-0030. As indicated by the filing stamp on its first page, we filed the CAFO and ACO with the Regional Hearing Clerk on JUN - 4 2014.

Pursuant to paragraphs 33 and 34 of the CAFO, Summit Processors, Inc. must pay the civil penalty within 30 days of the CAFO's effective date. Your check must display the case name Summit Processors, Inc. and the docket number CAA-05-2014-0030.

Please direct any questions regarding this case to Natalie Topinka at (312) 886-3853 or Tom Williams at (312) 886-0814.

Sincerely,

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

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Tom Williams/C-14J
Ray Pilapil, IEPA
Sue A. Schultz, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Summit Processors, Inc.
East Alton, Illinois,

Respondent.



Docket No. CAA-05-2014-0030

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 or the Act), 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 Summit Processors, Inc. (Respondent or Summit), 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

Stratospheric Ozone

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

10. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. The Administrator and the Attorney General of the United States, each through their respective delegates, have jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

11. Subchapter VI of the Act, 42 U.S.C. § 7671, 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 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.

Secondary Aluminum Production

15. The Administrator of EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. § 7412.

16. Under Section 112 of the Act, the Administrator promulgated the NESHAP for Secondary Aluminum Production at 40 C.F.R. Part 63, Subpart RRR (Subpart RRR). The NESHAP for Secondary Aluminum Production applies to sweat furnaces, as defined in Subpart RRR.

17. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

18. 40 C.F.R. § 63.1500 provides that the Subpart RRR regulations are applicable to any person who owns or operates a secondary aluminum production facility, as defined in 40 C.F.R. § 63.1503.

19. Subpart RRR at 40 C.F.R. § 63.1500(c)(3) states that the requirements of Subpart RRR pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to certain affected sources located at a secondary aluminum production facility that is an area source of Hazardous Air Pollutants (HAP). Among the affected sources covered by the D/F Subpart RRR requirements are all new and existing "sweat furnaces."

20. "Sweat furnace" is defined at 40 C.F.R. § 63.1503 as "a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to

separate the low-melting point aluminum from the scrap while the higher melting point iron remains in solid form.”

21. Subpart RRR, at 40 C.F.R. § 1505(f)(2), provides that the owner or operator of a sweat furnace at a secondary aluminum production facility must not discharge or cause to be discharged into the atmosphere emissions in excess of 0.80 nanograms of D/F TEQ per dry standard cubic meter (3.5×10^{-10} grams per dry standard cubic feet) at 11 percent oxygen. If the sweat furnace is not equipped with an afterburner, the owner or operator of the sweat furnace is required to conduct a performance test to demonstrate compliance with these emission limits, pursuant to 40 C.F.R. § 63.1511(b).

22. 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 after January 12, 2009 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

Stratospheric Ozone

23. Summit owns and operates a scrap metal recycling facility at 200 East Alton Avenue, East Alton, Illinois. Summit is a corporation organized and doing business in Illinois. Summit is a “person” as defined by 40 C.F.R. § 82.152.

24. Complainant alleges that Summit 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.

25. Complainant alleges that Summit has accepted small appliances and MVACs without recovering refrigerant; and that Summit has not obtained verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances and MVACs.

26. On January 17, 2013, EPA issued to Summit a Finding of Violation finding, *inter alia*, that it 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.

Secondary Aluminum Production

27. On August 24, 2012, EPA inspected the facility for compliance with the CAA. At the time of the inspection, the facility included one aluminum sweat furnace.

28. On October 16, 2012, under Section 114 of the CAA, 42 U.S.C. § 7414, EPA sent a Request for Information to Summit seeking information about the facility's compliance with the CAA. On November 20, 2012, Summit submitted a response to EPA indicating, among other things, that no testing for D/F emissions had been conducted on the sweat furnace. It also stated that the sweat furnace had been removed from service and destroyed.

29. Complainant alleges that at the time of the inspection, the facility was a secondary aluminum production facility, as that term is defined in Subpart RRR, and that it was an area source of HAPs.

30. As the owner or operator of a secondary aluminum production facility, Summit was subject to the NESHAP at 40 C.F.R. Part 63, Subparts A and RRR, and the sweat furnace at the facility was subject to sweat furnace requirements under Subpart RRR.

31. On January 17, 2013, EPA issued to Summit a Finding of Violation alleging, *inter alia*, that it violated 40 C.F.R. § 63.1511(b) because it failed to conduct a performance test to demonstrate compliance with the D/F emission limits of 40 C.F.R. § 1505(f)(2).

32. Summit has had an opportunity to confer with EPA concerning the alleged violations referenced in paragraphs 23 through 31.

Civil Penalty

33. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the alleged facts of this case and an analysis of Summit's financial information and ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$7000.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America." If sent by regular U.S. Postal Service mail, the cashier's or certified check shall be sent to:

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

If sent by a non-U.S. Postal Service delivery service, the cashier's or certified check shall be sent 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

For either delivery method, the cashier's or certified check must note Respondent's name, docket number of this CAFO and the billing document number.

35. 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

Tom Williams (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

36. This civil penalty is not deductible for federal tax purposes.
37. 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.
38. 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).
39. Respondent must pay any penalties incurred pursuant to paragraph 38 within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of

payment specified in paragraph 34, above, and will pay interest and nonpayment penalties on any overdue amounts, as provided in paragraph 38, above.

General Provisions

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

41. The effect of the settlement embodied in this CAFO, is conditioned upon the accuracy of Respondent's representations to EPA in its letter and Section 114 response dated November 20, 2012.

42. 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.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA, except for actions based on the violations alleged in this CAFO.

44. Respondent certifies that it is currently complying fully with the safe disposal regulations at 40 C.F.R. Part 82, Subpart F and the Secondary Aluminum Production NESHAP at 40 C.F.R. Part 63, Subpart RRR.

45. 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).

46. The terms of this CAFO bind Complainant and Respondent, and each of their respective successors and assigns.

47. 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.

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

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

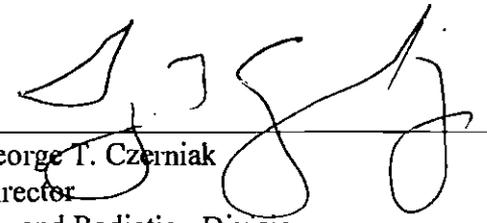
Summit Processors, Inc., Respondent

4-16-14
Date


Robert Dabbs, President
Summit Processors, Inc.

United States Environmental Protection Agency, Complainant

5/23/14
Date


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

Consent Agreement and Final Order
In the Matter of: Summit Processors, Inc.
Docket No. CAA-05-2014-0030

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.

5-29-14
Date



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

Consent Agreement and Final Order
Administrative Consent Order
In the Matter of: Summit Processors, Inc.
Docket No. CAA-05-2014-0030

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), and Administrative Consent Order (ACO), docket number CAA-05-2014-0030 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:

John Walker
Summit Processors, Inc.
200 East Alton Avenue
East Alton, Illinois 62024

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

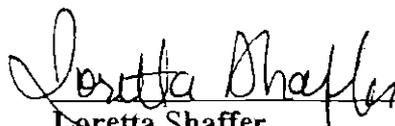
Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

Sue A. Schultz
Sandberg Phoenix & von Gontard P.C.
784 Wall Street - Suite 100
O'Fallon, IL 62269

Ray Pilapil, Manager
Bureau of Air, Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794

On the 4 day of June 2013.


Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

70091680000076763462