UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
March 31, 2022

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

American Iron & Metal Cleveland LLC
1250 Marquette Street
Cleveland, Ohio 44114

Email: WLavey@mdllp.net

Dear Wendlene Lavey

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves American Iron & Metal Cleveland LLC, docket no. CAA-05-2022-0011. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 31, 2022.

Pursuant to paragraph 40 of the CAFO, American Iron & Metal Cleveland LLC must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Charles Mikalian, Associate Regional Counsel, 312-886-2242.

Sincerely,

Brian Dickens
Digitally signed by Brian Dickens
Date: 2022.03.23 11:24:13 -05'00'
Brian Dickens, Supervisor
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingcleark@epa.gov

Charles Mikalian/via electronic mail
mikalian.charles@epa.gov

Bob Hodanbosi/via electronic mail
bob.hodanbosi@epa.ohio.gov

James Kavalec/via electronic mail
james.kavalec@epa.ohio.gov

David Hearne/via electronic mail
dhearne@city.cleveland.oh.us

Consent Agreement and Final Order
In the matter of: American Iron & Metal Cleveland LLC
Docket Number: CAA-05-2022-0011

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2022-0011, which was filed on March 31, 2022, in the following manner to the following addressees:

Copy by E-mail to Respondent:	Wendlene Lavey WLavey@mdllp.net
Copy by E-mail to Attorney for Complainant:	Charles Mikalian mikalian.charles@epa.gov
Copy by E-mail to Attorney for Respondent:	Wendlene Lavey wlavey@mdllp.net
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Type text here

ISIDRA MARTINEZ Digitally signed by ISIDRA MARTINEZ Date: 2022.03.31 13:24:21 -05'00'

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

Filed: March 31, 2022 CAA-05-2022-0011 U.S. EPA, Region 5 Acting Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2022-0011
	)	
American Iron & Metal Cleveland LLC	)	**Proceeding to Assess a Civil Penalty**
Cleveland, Ohio,	)	**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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is American Iron & Metal Cleveland LLC (AIM), a corporation doing business in Ohio.

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. Under Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated the provisions for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances, on May 14, 1993. 58 Fed. Reg. 28660. EPA updated the applicable provisions on November 18, 2016. 81 Fed. Reg. 82272.

10. As stated at 40 C.F.R. § 82.150(a), Subpart F requires Respondent to reduce emissions of class I, class II, and non-exempt substitute refrigerants to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the disposal of appliances.

11. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners that contain class I, class II, or non-exempt substitute refrigerants.

12. Under 40 C.F.R. § 82.152, "person" means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

13. Under 40 C.F.R. § 82.152, an “appliance” means any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner, refrigerator, chiller, or freezer.

14. Under 40 C.F.R. § 82.152, a “MVAC” means any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.

15. Under 40 C.F.R. § 82.152, “MVAC-like appliance” is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

16. Under 40 C.F.R. § 82.152, “small appliance” means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of 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, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

17. Under 40 C.F.R. § 82.152, “class I” refers to an ozone-depleting substance that is listed in 40 CFR Part 82 Subpart A, Appendix A.

18. Under 40 C.F.R. § 82.152, “class II” refers to an ozone-depleting substance that is listed in 40 CFR Part 82 Subpart A, Appendix B.

19. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in this subpart, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses that are specified in 40 C.F.R. § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refers to all other substitutes and end-uses not so specified in 40 C.F.R. § 82.154(a)(1).

20. Under 40 C.F.R. § 82.152, “refrigerant” for means, purposes of this subpart, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

21. Under 40 C.F.R. § 82.152, “disposal” means 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; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

22. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or
2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

23. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

24. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because of system failures, accidents, or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

25. Under 40 C.F.R. § 82.155(c), the final processor of a small appliance, MVAC, or MVAC-like appliance must keep a copy of all the signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy or in electronic format, for three years.

26. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $48,762 per day of violation up to a total of $390,092 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

27. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 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.

28. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

29. At all times relevant to this CAFO, Respondent owned and operated a scrap metal recycling facility at 1240 Marquette Street, Cleveland, Ohio (the Facility).

30. Respondent accepts at the Facility for recycling and disposal, among other things, small appliances and MVACs that contain or once contained ozone-depleting substances or other substitutes.

31. EPA conducted an unannounced inspection of the Facility on June 11, 2019.

32. At the Facility, Respondent is a final processor in the disposal process for vehicles and appliances, including small appliances and MVACs, within the meaning of 40 C.F.R. § 82.155(b).

33. At the time of the inspection, EPA inspectors did not observe the proper refrigerant recovery equipment for small appliances, and the Facility representative stated that the Facility did not recover refrigerant from small appliances.

34. At the time of the inspection, Facility representatives did not produce signed verification statements from suppliers asserting that small appliances and MVACs delivered to the Facility had had the refrigerant properly recovered prior to delivery to the Facility.

35. At the time of the inspection, EPA inspectors observed small appliances on a pile of metal that was to be recycled at the Facility. These small appliances had no evidence of proper refrigerant recovery.

36. At the time of the inspection, the Facility did not have any signage, or other equivalent means, to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to delivery of the appliance.

37. On January 30, 2020, EPA issued a Finding of violation (FOV) to Respondent alleging that Respondent failed to comply with the requirements of 40 C.F.R. Part 82, Subpart F at the Facility.

38. By failing to recover refrigerants from appliances during scrap recycling in accordance with 40 C.F.R. §§ 82.155(a) and 82.155(b), or to verify that refrigerants have been recovered in accordance with 40 C.F.R. § 82.155(b)(2), AIM violated 40 C.F.R. § 82.155(b) at the Facility.

39. By failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the item(s) to the facility, AIM violated 40 C.F.R. § 82.155(b)(2)(ii).

Civil Penalty

40. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e) and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is $100,000.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a $100,000 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

42. 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Charles Mikalian
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mikalian.charles@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

44. 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.

45. 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).

General Provisions

46. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mikalian.charles@epa.gov (for Complainant), and wlavey@mdllp.net (for Respondent).

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

48. The effect of the settlement described in paragraph 47, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 33 - 34 of this CAFO.

49. 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.

50. 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.

51. Respondent certifies that it is complying fully with Section 608 of the CAA and the provisions of 40 C.F.R. Part 82, Subpart F.

52. 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).

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

54. 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.

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

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

In the Matter of:

American Iron & Metal Cleveland LLC
Cleveland, Ohio

American Iron & Metal Cleveland LLC, Respondent

Ronald Black, President

03-17-2022
Date

In the Matter of:

American Iron & Metal Cleveland LLC
Cleveland, Ohio

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2022.03.28 13:35:32 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Date

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.

ANN COYLE Digitally signed by ANN COYLE Date: 2022.03.30 09:47:06 -05'00'

_____ Date

_____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5