



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

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October 22, 2010

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square - Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

Re: Robinson Plumbing and Supply, Inc., Docket No. CAA-01-2011-0001

Dear Ms. Santiago:

Please file the enclosed Amended Administrative Complaint and Notice of Opportunity for Hearing in Docket No. CAA-01-2011-0001. I enclose an extra copy.

The Amended Complaint corrects typographical errors in paragraphs 12 and 16.

I certify that this day I have served a copy by certified mail, return receipt requested on:

Russell Robinson, President
Robinson Plumbing and Heating Supply, Inc.
195 Broadway
Fall River, Massachusetts 02720

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas T. Olivier".

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Russell Robinson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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_____))
IN THE MATTER OF:))
))
Robinson Plumbing and Heating Supply Co., Inc.))
))
Respondent.))
))
Proceeding under Section 113 of the))
Clean Air Act, 42 U.S.C. § 7413.))
_____)

Docket Number CAA-01-2011-0001

**AMENDED ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING**

NATURE OF THE ACTION

1. The United States Environmental Protection Agency ("EPA") issues this Amended Administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), to Robinson Plumbing and Heating Supply Co., Inc. ("Robinson Supply" or "Respondent"). The Complaint notifies Robinson Supply that EPA intends to assess penalties for violations of the "stratospheric ozone protection" provisions under Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing. In support of its Complaint, EPA alleges the following:

STATUTORY AND REGULATORY BASIS

2. Sections 113(a) and (d) of the CAA provide for the assessment of penalties for violations of any requirement or prohibition of Subchapter VI of the CAA, or of any rule

promulgated under Subchapter VI. EPA has promulgated a rule under Subchapter VI, found at 40 C.F.R. Chapter 82, Subpart F, one purpose of which is to restrict the sale of Class I and Class II ozone-depleting substances (refrigerants).

3. The EPA rule at 40 CFR §82.154(m) provides:

No person may sell or distribute, or offer for sale or distribution, any substance that consists in whole or in part of a class I or class II substance for use as a refrigerant to any person unless:

(1) The buyer has been certified as a Type I, Type II, Type III, or Universal technician pursuant to §82.161;

(2) The buyer complies with §82.166(b) and employs at least one technician who is certified as a Type I, Type II, Type III, or Universal technician in accordance with §82.161;

(3) The buyer has been certified in accordance with 40 CFR Part 82, Subpart B and the refrigerant is either R-12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners in accordance with 40 CFR Part 82, Subpart G;

(4) The buyer complies with §82.166 (b) and employs at least one technician who is certified in accordance with 40 CFR Part 82, Subpart B, and the refrigerant is either R-12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners pursuant to 40 CFR Part 82, Subpart G. Nothing in this provision shall be construed to relieve persons of the requirements of §82.34(b) or §82.42 (b);

(5) The refrigerant is sold only for eventual resale to certified technicians or to appliance manufacturers (e.g., sold by a manufacturer to a wholesaler, sold by a technician to a reclaimer);

(6) The refrigerant is sold to an appliance manufacturer;

(7) The refrigerant is contained in an appliance with a fully assembled refrigerant circuit; or

(8) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair of the appliance.

GENERAL ALLEGATIONS

4. Respondent is a corporation organized under the laws of Massachusetts with a principal place of business located at 195 Broadway, Fall River, Massachusetts.

5. Respondent sells plumbing, heating, and air conditioning supplies.
6. Respondent operates in a number of New England locations, including in Avon and Woburn, Massachusetts.
7. Respondent is a “person” as defined in Section 302(e) of the CAA.
8. On July 13, 2010, Robinson Supply sales representatives sold containers of R-22, a Class II refrigerant, to an EPA inspector.

VIOLATIONS

9. On July 13, 2010, a Robinson Supply sales representative sold an EPA undercover inspector a 30-lb. container of R-22 at its Avon store. Attachment 1 is an invoice documenting the purchase and sale.

10. On July 13, 2010, a Robinson Supply sales representative sold an EPA undercover inspector a 30-lb. container of R-22 at its Woburn store. Attachment 2 is an invoice documenting the purchase and sale.

11. R-22 is a Class II substance, HCFC-22, listed at 40 CFR Part 82, Subpart A, Appendix B.

12. The buyer, an undercover inspector employed by EPA, was not a certified technician, and did not employ a certified technician, under any of the provisions of 40 CFR §§82.154(m)(1) through (4).

13. Robinson Supply’s representatives did not ask the EPA undercover inspector if he was a certified inspector.

14. Robinson Supply did not sell the R-22 refrigerant for eventual resale to certified technicians or to appliance manufacturers, to an appliance manufacturer, or contained in an appliance with a fully assembled refrigerant circuit.

15. The R-22 refrigerant sold by Robinson Supply was not charged into an appliance by a certified technician or an apprentice during maintenance, repair, or service of the appliance.

16. Accordingly, Robinson Supply violated 40 CFR §82.154(m) on two occasions by selling R-22 refrigerant to an EPA inspector.

PROPOSED CIVIL PENALTY

17. Under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and the Civil Monetary Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19.4 (Table 1)), EPA may assess a civil administrative penalty of up to \$37,500 per day per violation of the CAA. Based on the allegations above, the EPA proposes to assess the Respondent a civil administrative penalty of \$30,000.

18. In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413, requires EPA to consider the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require.

19. To implement the provisions of Section 113(e) of the CAA, EPA has calculated the proposed civil penalty using the "Clean Air Act Stationary Source Penalty Policy," dated October 25, 1991 ("Penalty Policy"), including Appendix X, a copy of which is enclosed with this Complaint. The Penalty Policy and Appendix X assign penalty amounts for various factors reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy and Appendix X also provide for the payment of a penalty amount that

includes the estimated economic benefit Respondent derived from the violations. Adjustments to the proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. See Attachment 3 for a brief explanation of the calculation of the proposed penalty under the Penalty Policy and Appendix X.

20. No penalty adjustments are proposed to reflect the violator's compliance history, good faith efforts to comply, or payment of penalties previously assessed for the same violations, since these factors do not appear applicable. Although Robinson Supply did derive an economic benefit from the sale of the R-22 refrigerant to EPA, the amount is not readily quantifiable and so is not included as a penalty component. Finally, EPA has calculated the proposed penalty based, in part, on its current knowledge of Respondent's size and financial condition. The proposed penalty may be adjusted if Respondent properly documents the scope of the economic impact of the penalty on its business, or raises other defenses relevant to the appropriate amount of the penalty.

21. If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, the Respondent need not file an Answer. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address below within thirty (30) days of receiving this Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receiving this Complaint.

Failure to make such payment within sixty (60) days may subject the Respondent to a default action. See 40 C.F.R. § 22.18(a).

22. Payment of the proposed penalty of \$30,000 must be made by submitting a bank, cashiers, or certified check payable to the “Treasurer, United States of America” to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, copies of the check must also be mailed to the Regional Hearing Clerk and to Thomas T. Olivier, Senior Enforcement Counsel, at the addresses provided below. The penalty check must reference the title of this proceeding (“In the Matter of Robinson Plumbing and Supply Co., Inc.”) and EPA Docket No. CAA-01-2011-0001.

23. The Respondent has a continuing obligation to comply with the CAA and with the terms and conditions of 40 CFR Part 82, Subpart F.

OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

24. In accordance with Section 113 of the CAA and 40 CFR §22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent’s receipt of this Complaint.**

Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

Respondent shall serve copies of the Answer and any subsequent pleadings which Respondent files in this action to the following address:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1737

Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 CFR Part 22 (copy enclosed). See 40 CFR §22.15 for the required contents of the Answer.

DEFAULT ORDER

25. Respondent may be found to be in default pursuant to 40 CFR § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings thirty (30) days after the default order became final under 40 CFR §22.27(c).

SETTLEMENT CONFERENCE

26. Respondent may confer informally with the EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

27. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter,

Respondent should contact Christine Sansevero, Environmental Engineer, at (617) 918-1699, or have legal counsel contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737.

Pursuant to 40 C.F.R. § 22.5(c)(4), Thomas T. Olivier is authorized to receive service on behalf of EPA.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

10/22/10
Date