



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 25 2007

Ref: 8ENF-L

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Guy Zwahlen
45 W. Louise Avenue
Salt Lake City, UT 84115

Re: Complaint and Notice of
Opportunity for Hearing,
Docket No. **CAA-08-2007-0004**

Dear Mr. Zwahlen:

Enclosed is an administrative complaint seeking penalties for your violation of certain requirements of the Clean Air Act ("CAA") and its implementing regulations.

Complaint and Notice of Opportunity for Hearing

You are hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as amended on November 15, 1990. Enclosed with this Complaint are the Consolidated Rules of Practice, the Stationary Source Civil Penalty Policy, and Complainant's Statement as to Determination of Proposed Penalty, which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that you failed to comply with the "Stratospheric Ozone Protection" requirements of Subchapter VI, at Section 608 of the CAA, 42 U.S.C. §§ 7671g, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Control). These requirements prohibit a person, in the course of disposing of an appliance, from: (1) knowingly venting or otherwise knowingly releasing or disposing of any class I or class II substance, or substitute substance, used as a refrigerant in such appliance in an manner which permits such substance to enter the environment; and (2) failing to evacuate the refrigerant, including all the liquid refrigerant, in the entire unit to a recovery or recycling machine certified pursuant to 40 C.F.R. § 82.158.



Printed on Recycled Paper

By law, you have the right to request a hearing regarding the matters set forth in this Complaint. You are encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If you do not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer, you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. You may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. Your signature on a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which you must submit your written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

EPA Contact

If you have any legal questions or would like to discuss the possibility of settlement, please contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6926.

EPA urges your prompt attention to these matters.

Sincerely,

Michael T. Bigner
for

Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA Stationary Source Civil Penalty Policy
4. Complainant's Statement as to Determination of Proposed Penalty

cc w/ Enclosures 1 and 4:

Greg Zurla, 8TMS-ISP

Jessie Goldfarb, 8ENF-L

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 25 11:15:15

IN THE MATTER OF:)
)
Guy Zwahlen) DOCKET NO. CAA_08-2007-0004
45 W. Louise Avenue)
Salt Lake City, UT 84115,) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
Respondent.)
_____)

STATUTORY AUTHORITY

This civil administrative Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") is issued pursuant to Section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), for violation of the "National Recycling and Emission Reduction Program" requirements of Section 608(c) of the CAA, 42 U.S.C. § 7671g(c), and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes the Administrator of EPA to issue this Complaint. This authority has been duly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency-Region 8 ("EPA" or "U.S. EPA-Region 8").

Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), provides that before issuing an administrative penalty order, the Administrator shall give written notice to the person to be assessed an administrative penalty and provide such person an opportunity to request a hearing. This Complaint and Notice of Opportunity for Hearing, issued pursuant to 40 C.F.R. §§ 22.13 and 22.14 of the

"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, constitutes such written notice and opportunity to request a hearing. A copy of the Consolidated Rules of Practice is enclosed.

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference into the Counts of this Complaint:

1. Respondent is Guy Zwahlen ("Respondent"), an individual.
2. At all times relevant to this action, Respondent was a wrecking and demolition contractor, with a business called Total Interior Demolition, located at 45 W. Louise Avenue in Salt Lake City, Utah 84115.
3. At all times relevant to this action, Respondent was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.
4. In Summer 2006, Respondent conducted a building demolition project at the former Fred Meyer building, located at 4091 West 3500 South, in West Valley, Utah.
5. During the course of the building demolition project referenced in Paragraph 4, above, Respondent disposed of nineteen (19) rooftop air conditioning units ("RTUs").
6. The RTUs referenced in Paragraph 5, above, were "appliances" as defined by 40 C.F.R. § 82.152 and/or Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2).

7. Respondent's disposal of the RTUs referenced in Paragraph 5, above, was "disposal" as defined by 40 C.F.R. § 82.152.

STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into the Counts of this Complaint:

8. Under Subchapter VI, Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), and its implementing regulation at 40 C.F.R. § 82.154(a)(1), no person disposing of an appliance may knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as refrigerant in such appliance in a manner which permits such substance to enter the environment.

9. Under Subchapter VI, Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), also applies to the disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. (See also 40 C.F.R. § 82.154(a)(1)).

10. Subchapter VI, Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), states that for the purposes of that paragraph, the term "appliance" includes any device which contains and uses as a refrigerant a substitute substance and which is used for commercial purposes, including any air conditioner.

11. Under 40 C.F.R. § 82.156(a), all persons disposing of appliances must evacuate the refrigerant, including all of the liquid refrigerant, in the entire unit to a recovery or recycling machine certified pursuant to 40 C.F.R. § 82.158.

DESCRIPTION OF VIOLATIONS

COUNT I

12. Respondent, in the course of disposing of the nineteen (19) appliances referenced in Paragraph 5, above, knowingly vented or otherwise knowingly released or disposed of a class I or class II substance used as refrigerant in such appliances in a manner which permitted such substance to enter the environment, in violation of Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), and 40 C.F.R. § 82.154(a)(1).

13. In addition, or in the alternative, Respondent, in the course of disposing of the nineteen (19) appliances referenced in Paragraph 5, above, knowingly vented or otherwise knowingly released or disposed of a substitute substance for a class I or class II substance used as a refrigerant in such appliances in a manner which permitted such substance to enter the environment, in violation of Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.154(a)(1).

COUNT II

14. Respondent, in the course of disposing of the nineteen (19) appliances referenced in Paragraph 5, above, failed to evacuate the refrigerant, including all of the liquid refrigerant, in the entire unit of each appliance to a recovery or recycling machine certified

pursuant to 40 C.F.R. § 82.158, in violation of 40 C.F.R. § 82.156(a).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the "National Recycling and Emission Reduction Program" requirements of Section 608(c) of the CAA, 42 U.S.C. § 7671g(c), and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction), occurring after March 15, 2004. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the 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 violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy" dated October 25, 1991 ("Penalty Policy"),

including Appendix X¹. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$141,287** for the violations alleged in this Complaint. The Penalty Policy and Complainant's Statement as to Determination of Proposed Penalty are enclosed with this Complaint and incorporated herein.

The Administrative Law Judge is not bound by EPA's Penalty Policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized by statute.

Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America" and mailed to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101.

¹Appendix X is entitled "Clean Air Act Policy for Violation of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant," June 1, 1994.

A copy of the check must be sent to the Regional Hearing Clerk and also to Jessie Goldfarb, Senior Enforcement Attorney, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 113(d) (2) (A) of the CAA, 42 U.S.C. § 7413(d) (2) (A), Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA-Region 8
1595 Wynkoop Street
Denver, CO 80202-1129.

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the

Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2). The proposed penalty shall become due and payable by Respondent, without further proceedings, sixty (60) days after a final order is issued upon default.

QUICK RESOLUTION

Respondent may resolve this proceeding at any time by paying the specific penalty set forth in the Complaint. Such action to make payment need not contain any response to, or admission of, the allegations set forth in the Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and appeal the final order. See Section 22.18 of the Consolidated Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6926.

Please note that a request for an informal settlement conference does not extend the thirty-day period for filing a written Answer and requesting a hearing.

9/25/07
Date

for Michael T. Bisnes
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

IN THE MATTER OF:
DOCKET NO.:

Guy Zwahlen
CAA-08-2007-0004

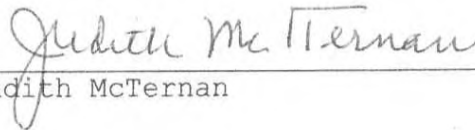
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-carried to the Regional Hearing Clerk, U.S. EPA-Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail: Return Receipt Requested to:

Guy Zwahlen
45 W. Louise Avenue
Salt Lake City, UT 84115

9/25/07

Date


Judith McTernan