



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

Nikolay Lopatin
6000 W. 38th Avenue
Wheat Ridge, CO 80033

Re: Complaint and Compliance Order,
Docket Nos. **CAA-08-2007-0005;**
CAA-08-2007-0006

Dear Mr. Lopatin:

Enclosed are two documents. The first is an administrative complaint seeking penalties for your violation of certain requirements of the regulations implementing the Clean Air Act ("CAA"). The second is an administrative order requiring that you prospectively comply with those same requirements.

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 implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. These regulations, which are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program), prohibit a person from retrofitting motor vehicle air conditioners with the substitute refrigerant "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling.



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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.

Compliance Order

In addition, you are hereby served with a Compliance Order (referred to as the "Order") pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended on November 15, 1990.

EPA alleges in the Order that you failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. The requirements of these regulations, which are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program), are set forth in the "Complaint and Notice of Opportunity for Hearing" section, above.) The Order requires you to comply with 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix D.

Violation of the Order may lead to the commencement of a civil action for permanent or temporary injunction, or to assessment and recovery of a civil penalty of not more than \$32,500 per day for each violation, or both, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19. In issuing this Order, EPA does not waive its right to seek injunctive relief or civil penalties of up to \$32,500 per day for each day of violation under Section 113(b) of the CAA for any and all violations, or both injunctive relief and civil penalties.

This Order will become effective thirty (30) calendar days from the date of your receipt of the Order, allowing you thirty (30) days in which to request a conference with EPA. Whether or not you request a conference, you may confer informally with EPA concerning the alleged violations. You may wish to be represented by counsel at the conference.

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. Resner
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
5. Compliance Order

cc w/ Enclosures 1, 4, and 5:
Greg Zurla, 8TMS-ISP
Jessie Goldfarb, 8ENF-L

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 SEP 23 12:10:20

IN THE MATTER OF:)

Nikolay Lopatin)
6000 W. 38th Avenue)
Wheat Ridge, CO 80033,)

Respondent.)
_____)

DOCKET NO. CAA-08-2007-0006

COMPLIANCE ORDER

STATUTORY AUTHORITY

This Compliance Order (referred to as the "Order") is issued pursuant to Section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), as amended on November 15, 1990, for violation of the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. Those regulations are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program). The Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency ("EPA"), Region 8, has been duly authorized to issue this Order.

FINDINGS OF VIOLATION

1. Respondent is Nikolay Lopatin ("Respondent"), an individual.
2. At all times relevant to this action, Respondent was the owner of a business called Discount Auto Repair, located at 6000 38th Avenue, Wheat Ridge, Colorado 80033 (the "facility").
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. On June 15, 2006, an inspector for the Colorado Department of Health and Environment ("CDPHE") inspected the facility referenced in Paragraph 2, above.

5. "Hot Shot" (also known as "HCFC Blend Omicron" or "Kar-Kool" or "R-414B") is a "substitute" (refrigerant) as defined by 40 C.F.R. § 82.172.

6. During the inspection referenced in Paragraph 4, above, the CDPHE inspector found that Respondent had retrofitted motor vehicle air conditioners ("MVACs") with "Hot Shot" without:
(1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling.

7. On June 15, 2006, the CDPHE inspector referenced in Paragraph 4, above, interviewed the owner of a 1991 Pace Arrow, whose MVAC had last been serviced at Respondent's facility (on June 27, 2005).

8. On June 15, 2006, the CDPHE inspector referenced in Paragraph 4, above, interviewed the owner of a 1987 Mercury Cougar, whose MVAC had last been serviced at Respondent's facility (on October 4, 2005).

9. During the inspection of the vehicles referenced in Paragraphs 7 and 8, above, the CDPHE inspector found that their MVACs had been retrofitted with "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using unique fittings; and (3) using required labelling.

10. The Final Rule memorializing EPA's decision on the acceptability of the substitute "Hot Shot", and imposing restrictions

on its use, is found at 61 Federal Register 54030 (October 16, 1996). The effective date of that rulemaking was November 15, 1996.

11. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k, found at 40 C.F.R. § 82.174(c), no person may use a substitute without adhering to any use restrictions set by the acceptability decision, after the effective date of any rulemaking imposing such restrictions.

12. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k, found at 40 C.F.R. Part 82, Subpart G, Appendix D (Substitutes Subject to Use Restrictions and Unacceptable Substitutes), the use of "Hot Shot" must meet the following conditions:

a. the retrofit of the MVAC with "Hot Shot" must include replacing non-barrier hoses with barrier hoses;

b. "Hot Shot" may only be used with a set of fittings that is unique to that refrigerant (see 40 C.F.R. Part 82, Subpart G, Appendix D, 1.); and

c. when the retrofit of the MVAC with "Hot Shot" is performed, required labelling must be used (see 40 C.F.R. Part 82, Subpart G, Appendix D, 2.).

13. Respondent retrofitted the MVACs of the vehicles referenced in Paragraphs 7 and 8, above, with "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling, in violation of 40 C.F.R.

§ 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix D.

COMPLIANCE ORDER

Paragraphs 1-13 are incorporated by reference herein. Pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), and upon the basis of available information, EPA hereby issues the following order:

14. Effective immediately, Respondent shall comply with all the requirements of 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix D.

ENFORCEMENT

15. Issuance of this Order does not preclude any other action by EPA to redress past or future violations of the CAA, including either of the following:

a. an administrative penalty complaint pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for penalties of not more than \$32,500 per day for each violation during the period the facility is not in compliance; or

b. a civil action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief or civil penalties of not more than \$32,500 per day for each violation during the period the facility is not in compliance, or both.

16. Pursuant to Section 120 of the CAA, 42 U.S.C. § 7420, EPA is also authorized to assess noncompliance penalties aimed at recovering the economic benefit which any person received by failing to comply with the CAA.

17. In addition, pursuant to Section 306(a) of the CAA, 42 U.S.C. § 7606(a); the regulations promulgated thereunder at 40 C.F.R. Part 15; and Executive Order 11738, facilities to be utilized in federal contracts, grants, or loans must be in full compliance with the CAA and all regulations promulgated thereunder. Violation of the CAA may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

18. Pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

OPPORTUNITY FOR CONFERENCE

19. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), we are offering the Respondent an opportunity for a conference to discuss the Order. The request for such a conference must be made no later than thirty (30) calendar days from the date of receipt of this Order. If you wish to make arrangements for a conference, please contact Jessie Goldfarb, Senior Enforcement Attorney, U.S. EPA-Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. Ms. Goldfarb's telephone number is (303) 312-6926. By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the CAA.

EFFECTIVE DATE

20. This Order shall become effective immediately upon receipt of this Order by the Respondent.

9/25/07
Date

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