

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

In the Matter of)
)
O'Reilly Automotive, Inc.) Docket No. CAA-07-2006-025
2020 W. 6th Avenue)
Emporia, Kansas 66801) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
Respondent.)
)

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, (hereinafter "the Act"), 42 U.S.C. § 7413(d).

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated certain "Stratospheric Ozone Protection" requirements of Subchapter VI, at Section 608 of the Act, 42 U.S.C. § 7671g. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violations.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is O'Reilly Automotive, Inc., 2020 W. 6th Avenue, Emporia, Kansas, 66801.

Statutory and Regulatory Background

5. Section 608 of the Act, 42 U.S.C. § 7671g(a), requires the Administrator to promulgate regulations in establishing standards and requirements regarding the use and disposal of class I and class II substances during the service, repair, or disposal of appliances and industrial process refrigeration.

6. The Administrator promulgated final regulations in accordance with Section 608 of the Act, 42 U.S.C. § 7671g, on November 14, 1994. These regulations are set forth at 40 C.F.R. Part 82, Subpart F (40 C.F.R. § 82.150-82.166).

Violations

7. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Act, as follows:

General Allegations

8. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e).

9. 40 C.F.R. § 82.154(m) prohibits any person from selling or distributing, or offering 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 the buyer has been certified as a technician pursuant to 40 C.F.R. Part 82, Subpart B, or the buyer meets one of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

10. On June 14, 2006, at its O'Reilly Automotive, Inc. (O'Reilly), store at 2020 W. 6th Avenue, Emporia, Kansas, O'Reilly sold for use as a refrigerant two 15-ounce cans of HCFC-22 (also referred to as "R-22") to a person who was not a certified technician, without meeting any of the other enumerated conditions for a legal sale set forth in 40 C.F.R. § 82.154(m).

11. The sale of the two 15-ounce cans of refrigerant as outlined above in paragraph 10 constitutes a sale of refrigerant to an uncertified technician in violation of 40 C.F.R. § 82.154(m).

12. Respondent's failure to comply with 40 C.F.R. § 82.154(m), is a violation of §608 of the Act, 42 U.S.C. § 7671g.

Relief

13. Section 113(d) of the Act, 42 U.S.C. § 7413(d), as amended by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, authorizes a civil penalty of up to \$32,500 per day for each violation of the Act. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e), and the Stationary Source Civil Penalty Policy, October 25, 1991, including Appendix X, copies of

which are enclosed with this complaint, as well as Respondent's history of any prior violations and degree of culpability.

PROPOSED PENALTY

14. For the violations stated herein, it is proposed that a penalty of \$23,212 be assessed. The proposed penalty was determined by calculation in accordance with the enclosed Clean Air Act Stationary Source Civil Penalty Policy, by combining the factors in the policy, including the appropriate penalty for each Count set forth herein, the size of Respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent.

15. Payment of the total penalty, \$23,212, may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

US EPA Region 7
PO Box 371099M
Pittsburgh, PA 15251.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

16. Pursuant to Section 113(d)(2) of the CAA, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a. The circumstances or arguments that are alleged to constitute the grounds of defense;
- b. The facts that Respondent intends to place at issue;

- c. The basis for opposing any proposed relief; and
- d. Whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegations.

17. If Respondent requests a hearing, it shall be held and conducted in accordance with 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 (40 C.F.R. Part 22). (Copy enclosed.)

18. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing, such failure will constitute a binding admission of all of the facts alleged in this Complaint, and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer, and the civil penalties proposed therein shall become due and payable without further proceedings.

19. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, the Presiding Officer or any person likely to advise these officials in the decision of this case.

Settlement Conference

20. Whether or not a Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Julie Murray, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913)551-7448.

21. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to a hearing, a written answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.

22. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a

written Consent Agreement and a Final Order will be issued by the Regional Judicial Officer, United States Environmental Protection Agency, Region VII. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

8/24/06
Date

Carol Kather
Carol Kather
Acting Director
Air, RCRA and Toxics Division

8-24-06
Date

Julie Murray
Julie Murray
Assistant Regional Counsel

Enclosures: Consolidated Rules of Practice
Clean Air Act Stationary Source Civil Penalty Policy
Appendix X, Clean Air Act Stationary Source Civil Penalty Policy

CERTIFICATE OF SERVICE

I certify that on the date listed below, the original and one true and correct copy of the foregoing Complaint was hand delivered to the Regional Hearing Clerk, Environmental Protection Agency, Region VII, Kansas City, Kansas, 66101, and a copy of the foregoing Complaint was mailed via certified mail to:

The Corporation Company, Inc.
Resident Agent for O'Reilly Automotive, Inc.
515 South Kansas Avenue
Topeka, Kansas 66603-0000.

8/28/10
Date

Clarah Zagza
Name

June 26, 2006

Penalty Calculation Sheet
O'Reilly Automotive, Inc.
Emporia, KS
AFS 20-111-C0005

Economic Benefit Component **\$ 0**

Two cans of 15 oz refrigerant
(Profit approx \$2.00 per can)
EB <\$5,000, no penalty assessed.

Gravity Component **\$11,606**

Violation of § 82.156(m). Sale of refrigerant to
uncertified technician (moderate/major)

Analysis: The violator's actions resulted in a moderate potential for harm because
of the potential for uncertified technicians to release refrigerant to the atmosphere.
The violator's actions were a major deviation from the requirement because the
company did not comply at all with the requirement that a class II refrigerant be sold
only to a properly certified technician.

Size of Violator **\$11,606**

Estimated sales of \$1 to \$2.5 million results in a multiplier of 2.5.
(No multiplier >2 shall be used.)

Preliminary Deterrence Amount **\$23,212**
(EB + Gvty + SOV= PDA)

This penalty has been calculated in accordance with Appendix X of the Clean Air Act Stationary
Source Civil Penalty Policy and the Civil Monetary Penalty Inflation Adjustment Rule.