



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

SEP 1 2008

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 SEP -3 PM 3:35
REGIONAL HEARING
CLEAN

Mark C. Hammond
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

**Re: Information Technology Services, a Division of Johnson & Johnson
Services, Inc., CAA-02-2008-1207**

Dear Mr. Hammond:

I am enclosing a copy of the fully executed Consent Agreement and Final Order in the above matter.

If you have any questions, please do not hesitate to contact me at (212) 637-3211.

Sincerely,

A handwritten signature in cursive script that reads "Kara E. Murphy".

Kara Murphy
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2008 SEP -3 PM 3:35
REGIONAL HEARING
CLERK

-----X
IN THE MATTER OF :
 :
Information Technology Services, :
a Division of Johnson and Johnson, :
Services, Inc., Raritan, NJ :
Respondent :
 :
In a proceeding under Section 113(d) :
of the Clean Air Act 42 U.S.C. § 7413(d) :
 :
-----X

**CONSENT AGREEMENT
AND
FINAL ORDER
CAA-02-2008-1207**

Preliminary Statement

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On March 17, 2008, the U.S. Department of Justice (DOJ) granted EPA's March 3, 2008 request for a waiver of the CAA Section 113(d) 12-month limitation on EPA's authority to initiate an administrative action against Information Technology Services, a Division of Johnson and Johnson Services, Inc. (J&J or Respondent), formerly known as Johnson & Johnson Networking & Computing Services.

Respondent disclosed, to the Complainant, violations of provisions of the Protection of Stratospheric Ozone regulations, 40 C.F.R. Part 82, Subpart F (CFC Regulations). During the course of negotiations, the Respondent demonstrated that it is currently in compliance with all regulations identified.

Pursuant to 40 C.F.R. § 22.18(b), EPA is authorized to settle administrative enforcement actions provided they are commenced in accordance with 40 C.F.R. § 22.13(a) or (b). Where an action is commenced pursuant to § 22.13(b), the Consent Agreement shall also contain the information described in § 22.14(a)(1)-(3) and (8). In accordance with §§ 22.13(b), and 22.18(b), EPA and Respondent enter into this Consent Agreement and propose the attached Final Order to simultaneously commence and resolve the violations that Respondent disclosed. EPA commences this administrative action and simultaneously resolves it, with the agreement of J&J, by filing this Consent Agreement, effective upon issuance of the attached Final Order.

Section 114 of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities,

establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

Section 608 of the Act requires the EPA Administrator to promulgate regulations to reduce emissions of class I and class II ozone-depleting substances (ODS) or refrigerant containing chlorofluorocarbons (CFCs) into the atmosphere to the lowest achievable level by maximizing the recapture and recycling of refrigerants during the service, maintenance, repair, and disposal of appliances. Pursuant to Section 608 of the Act, EPA promulgated the CFC Regulations. Pursuant to 40 C.F.R. § 82.150(b), the CFC Regulations apply to any person servicing, maintaining, or repairing appliances. The CFC Regulations require repair of significant leaks, based on annual leak rates of equipment and require servicing records documenting the date, type of service, and quantity of refrigerant added.

In this action, EPA finds that Respondent violated Sections 114, 608, and title V of the Act, as well as provisions of the CFC Regulations, promulgated pursuant to Sections 114 and 608, and conditions in its title V operating permit that include those provisions as applicable requirements. EPA resolves all of these violations with the attached Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations

contained in the Findings of Fact and Conclusions of Law in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the Final Order attached.

Statutory and Regulatory Background

1. Section 113 of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.
2. Section 114 of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.
3. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any other agent or employee thereof.
4. Pursuant to Section 608 of the Act, EPA promulgated the CFC Regulations to reduce the amount of class I and class II substances commonly known as ozone-depleting substances (ODS) or refrigerant containing chlorofluorocarbons (CFCs) into the atmosphere by the recapture and recycling of such substances during the service, maintenance, repair, and disposal of appliances.

5. Pursuant to 40 C.F.R. § 82.150(b), the CFC Regulations apply to any person servicing, maintaining, or repairing appliances.
6. Pursuant to 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.
7. Pursuant to 40 C.F.R. § 82.150(a), the purpose of the CFC Regulations is to reduce emissions of class I and class II refrigerants and their substitutes to the lowest achievable level by maximizing recapture and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances.
8. Pursuant to 40 C.F.R. § 82.152, refrigerant means, for purposes of Subpart F, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.
9. Class I substances are listed in 40 C.F.R. Part 82, Subpart A, Appendix A.
10. Class II substances are listed in 40 C.F.R. Part 82, Subpart A, Appendix B.
11. Pursuant to 40 C.F.R. § 82.152, appliance means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

12. Pursuant to 40 C.F.R. § 82.156(i)(5), effective May 14, 1993, owners/operators of comfort cooling appliances containing 50 or more pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period.
13. Pursuant to 40 C.F.R. § 82.152, leak rate means the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The leak rate is expressed in terms of the percentage of the appliance's full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period.
14. Pursuant to 40 C.F.R. § 82.156(i)(9), effective May 14, 1993, owners/operators of comfort cooling appliances must repair leaks within 30-days after discovery, or within 30-days after when the leaks should have been discovered if the owners intentionally shielded themselves from information that would have revealed a leak, unless granted additional time in accordance with § 82.156(i).
15. Pursuant to 40 C.F.R. § 82.166(k), effective May 14, 1993, owners/operators of appliances containing 50 or more pounds of refrigerant must keep servicing records documenting the date, type of service, and quantity of refrigerant added.
16. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to title V of the Act, it shall be unlawful for any person to violate any requirement of a permit issued under

title V of the Act or to operate a title V affected source, except in compliance with a permit issued by a permitting authority under title V of the Act.

17. Section 502(d) of the Act requires each State to develop and submit, to the Administrator, a permit program meeting the requirements of title V of the Act.
18. Pursuant to Section 502(e) of the Act, EPA maintains its authority to enforce title V operating permits issued by a State.
19. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act, shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the title V operating permit and that the permittee promptly report any deviations from the operating permit requirements to the permitting authority.
20. In accordance with Section 502(d)(1) of the Act, New Jersey developed and submitted N.J.A.C. 7:27-22 (the New Jersey title V operating permit program) to meet the requirements of title V of the Act and 40 C.F.R. Part 70, promulgated pursuant to Section 502(b) of the Act.
21. EPA granted interim approval of the New Jersey title V operating permit program, N.J.A.C. 7:27-22, with an effective date of June 17, 1996.
61 Fed. Reg. 24,715 (May 16, 1996).
22. EPA granted final approval to the program, with an effective date of November 30, 2001. 66 Fed. Reg. 63,168 (Dec. 5, 2001).

23. N.J.A.C. 7:27-22.19(f) provides that all New Jersey title V operating permits shall include a provision that requires annual compliance certifications be submitted to EPA and to New Jersey, the permitting authority.

Findings of Fact

24. Respondent J&J is a division of J&J Services, Inc., and is incorporated under the laws of the State of New Jersey.
25. J&J owns and/or operates a facility located at 1003 Route 202 North, Raritan, Somerset County, New Jersey.
26. On May 17, 2004, New Jersey issued J&J a title V operating permit (BOP990001) (title V operating permit).
27. FC Reference Number 13 of J&J's title V operating permit includes the CFC Regulations as an applicable requirement.
28. J&J's title V operating permit requires six month deviation reports and annual compliance certifications to be filed with the New Jersey Department of Environmental Protection.
29. J&J indicated that in its title V operating permit, it operates many comfort cooling appliances that contain over 50 pounds or more of the class II refrigerant, Monochlorodifluoromethane (R-22, HCFC-22).
30. J&J indicated that some of its comfort cooling appliances containing over 50 pounds or more of R-22, HCFC-22, leaked refrigerant at a rate such that the loss of refrigerant exceeded 15 percent of the total charge during a 12-month period.

31. In its 2005 and 2006 title V annual certifications for May 17, 2004 through May 17, 2005 and January 1, 2005 through December 31, 2005, J&J disclosed violations of:
 - i. 40 C.F.R. § 82.156(i)(9) for failures to repair leaks of refrigerant within 30-days of discovery; and
 - ii. 40 C.F.R. § 82.166(k) for failures to keep servicing records documenting the date, type of service, and/or quantity of refrigerant added.
32. Subsequent to these disclosures, EPA informally requested servicing records to assess compliance with the Act and the CFC Regulations.
33. On May 8, 2007, J&J sent out the servicing records requested by EPA covering May 17, 2004 through March 1, 2007.
34. After reviewing the J&J records, EPA found an additional violation of the regulatory provisions cited in paragraph 31 above.
35. J&J is in violation of N.J.A.C. 7:27-22.19(f) and FC Reference Number 7 of its title V operating permit for failure to file a complete and accurate title V annual certification.
36. In February of 2008, after the course of several telephone conversations, EPA and Respondent entered into negotiations to resolve the violations alleged in this complaint.

Conclusions of Law

37. EPA finds, based upon the Findings of Fact set forth above, that Respondent is a “person” as defined by Section 302(e) of the Act.
38. EPA finds, based upon the Findings of Fact set forth above, that Respondent is a person within the meaning of 40 C.F.R. § 82.152 of the CFC Regulations.
39. EPA finds, based upon the Findings of Fact set forth above, that as an owner/operator of comfort cooling appliances that contain over 50 pounds or more of the class II refrigerant, Respondent is subject to the requirements of Sections 114 and 608 of the Act.
40. EPA finds, based upon the Findings of Fact set forth above, that as a facility operating under a title V permit, Respondent is subject to title V of the Act and the conditions provided in its title V operating permit that include the CFC Regulations as applicable requirements.
41. EPA finds, based upon the Findings of Fact set forth above, that Respondent services, maintains, and repairs appliances.
42. EPA finds, based upon the Findings of Fact set forth above, that several of Respondent’s comfort cooling appliances that contain over 50 pounds or more of the class II refrigerant, Monochlorodifluoromethane (R-22, HCFC-22), leaked refrigerant at a rate such that the loss of refrigerant exceeded 15 percent of the total charge during a 12-month period.

43. EPA finds, based upon the Findings of Fact set forth above, that Respondent failed to repair leaks from appliances containing 50 or more pounds of refrigerant, within 30-days of discovery, in violation of 40 C.F.R. § 82.156(i)(9), a provision of the CFC Regulations, and in violation of FC Reference Number 13 of the facility's title V operating permit, which includes the CFC Regulations as an applicable requirement.
44. EPA finds, based upon the Findings of Fact set forth above, that Respondent failed to keep service and repair records documenting the date, type of service, and/or quantity of refrigerant added in violation of 40 C.F.R. § 82.166(k), a provision of the CFC Regulations, and FC Reference Number 13 of the facility's title V operating permit, which includes the CFC Regulations as an applicable requirement.
45. EPA finds, based upon the Findings of Fact set forth above, that Respondent failed to submit a complete and accurate annual title V certification in violation of N.J.A.C. 7:27-22.19(f) and FC Reference Number 7.
46. EPA finds that Respondent's violation of 40 C.F.R. § 82.156(i)(9) is a violation of Section 608 of the Act.
47. EPA finds that Respondent's violation of 40 C.F.R. § 82.166(k) is a violation of Sections 114 and 608 of the Act.
48. EPA finds that Respondent's violations of 40 C.F.R. § 82.156(i)(9) and 40 C.F.R. § 82.166(k) are violations of the facility's title V operating permit and title V of the Act.

49. EPA finds that Respondent's violation of FC Reference Number 7 is a violation of the facility's title V operating permit and N.J.A.C. 7:27-22.19(f).

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

50. Respondent shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of thirty-eight thousand one hundred twenty-two dollars (\$38,122) either by cashiers' or certified check, within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2008-1207) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

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

Respondent shall send notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

51. If Respondent fails to make full and complete payment of the \$38,122 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

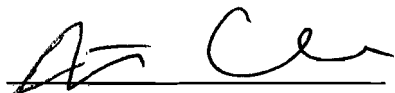
- i. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

52. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

53. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.

54. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other environmental laws, nor shall this CAFO affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
55. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement or the attached Final Order and explicitly waives its right to appeal the attached Final Order.
56. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.
57. Each party to this CAFO shall bear its own costs and attorneys fees in this action resolved by this Consent Agreement.
58. This CAFO shall be binding on Respondent and its successors and assignees.
59. Each of the undersigned representative(s) to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.

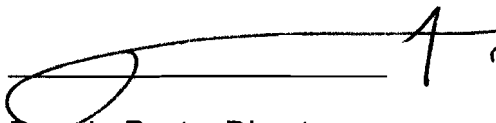
For Respondent:



Jitender Chopra
Vice-President of Finance
Information Technology Services,
a Division of Johnson and Johnson
Services, Inc.

Date August 11, 2008

For Complainant:



PATRIEL
DORRELL

Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date AUGUST 15, 2008

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Information Technology Services, a Division of Johnson & Johnson Services, Inc. CAA-02-2008-1207. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 8-19-2008



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency – Region

CERTIFICATE OF SERVICE

In re: **Information Technology Services, a Division of Johnson & Johnson,
Services, Inc. - CAA-02-2008-1207**

I certify that I have this day, September 3, 2008, caused to be sent the foregoing fully executed CONSENT AGREEMENT AND FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand To:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency – Region 2
Office of Regional Counsel
290 Broadway – 16th Floor
New York, New York 10007

Copy by Certified Mail
Return Receipt Requested To:

Mark C. Hammond.
Drinker Biddle & Reath, LLC
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Dated: September 3, 2008
New York, New York


Orelia Lewis, Secretary