



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 22 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joanne Beck, Owner
Mill Valley Recycling, LLC
1006 South Barclay Street
Milwaukee, Wisconsin 53204

Dear Ms. Beck:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Mill Valley Recycling, LLC, Docket No. CAA-05-2012-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on DEC 30 2011.

Pursuant to paragraph 24 of the CAFO, Mill Valley Recycling, LLC, must pay the civil penalty within 30 days of DEC 30 2011. Your check must display the case name Mill Valley Recycling, LLC, the docket number, CAA-05-2012-0006, and the billing document number, 2751203A007.

Please direct any questions regarding this case to Michael Berman, Associate Regional Counsel, at (312) 886-6837.

Sincerely,

Sara Breneman
Chief
AECAB, MI/WI Section

Enclosure

cc: Mike Maistelman
Maistelman & Associates, LLC

William Bauman
Wisconsin Department of Natural Resources

RECEIVED

DEC 30 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. CAA-05-2012-0006
)
)
Mill Valley Recycling, LLC) Proceeding to Assess a Civil Penalty
Milwaukee, Wisconsin,) Under Section 113(d) of the Clean Air Act
)
Respondent.) 42 U.S.C. § 7413(d)
)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Mill Valley Recycling, LLC, (Mill Valley) a corporation doing business in Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies specific factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 608 of the Act, EPA promulgated the regulations for the Protection of Stratospheric Ozone located at 40 C.F.R. Part 82, Subpart F. The Subpart F regulations contain Recycling and Emissions Reduction requirements for ozone depleting substances. The purpose of the regulations is to reduce emissions of Class I and Class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances in accordance with Section 608 of the Clean Air Act. 40 C.F.R. §§ 82.150(a) through 156.

10. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly recover the refrigerant. 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. 40 C.F.R. § 82.166(i) and (m).

11. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations of the Act that occurred after March 15, 2004 through January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

14. Mill Valley owns and operates a scrap metal recycling facility at 1006 South Barclay Street, Milwaukee, Wisconsin. Mill Valley, is a corporation organized and doing business in Wisconsin and is a person as defined by 40 C.F.R. § 82.152.

15. Mill Valley is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

16. EPA inspected Mill Valley's facility on July 16, 2008. We noted that Mill Valley received a number of small appliances from suppliers, as evidenced by the presence of several appliances on site. There were some appliances in piles of scrap that appeared mangled and some had refrigeration-related components removed or cut refrigerant lines.

17. During the inspection, Mill Valley did not have a refrigerant recovery machine at the facility.

18. EPA issued an information request to Mill Valley under section 114 of the Clean Air Act, on October 13, 2008. In its response to the 114 request, dated November 11, 2008, Mill Valley admitted that it did not possess or use recovery equipment. It supplied statements which it asserted were collected during calendar year 2008. Some were undated, and there appeared to be various time gaps for which dated statements were not supplied.

19. EPA issued a follow-up information request on September 6, 2009. In responding to an EPA information request on March 30, 2010, Mill Valley supplied a package of certification statements. Some of the statements had not been dated by the company's suppliers.

20. Many of the supplied statements did not include the name and address of the person who recovered the refrigerant, the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery, in violation of 40 C.F.R. § 82.156(f).

21. EPA issued a finding of violation to Mill Valley on March 31, 2011. Mill Valley traveled to meet with EPA and cooperated in addressing the issues raised in this matter. In a meeting with Mill Valley on May 10, 2011, company representatives explained that the company achieved compliance by hiring a technician to periodically evacuate appliances that had been set aside for the purpose of recovering refrigerants.

22. Based on EPA's inspection and the responses to the information requests, Mill Valley for the year 2008 is in violation of the requirements at 40 C.F.R. §156, that recyclers that take the final step in the disposal process of a small appliance, room air conditioning, motor vehicle air conditioners (MVACs) or MVAC-like appliances must recover any remaining refrigerant from the appliance or verify that the refrigerant has been evacuated from the

appliance or shipment of appliances previously. This verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained and must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

Civil Penalty

23. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and any other factor such as cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$3,554.

24. Within 90 days after the effective date of this CAFO, Respondent must pay a \$3,554 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or for checks sent by express mail to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note the case name, docket number of this CAFO, and the billing document number.

25. Respondent must send a notice of payment that states the case title, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air

Enforcement and Compliance Assurance Branch and to Michael Berman at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Michael Berman (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

26. This civil penalty is not deductible for federal tax purposes.

27. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

28. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

29. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

30. The effect of the settlement described in paragraphs 5, 6 and 7, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 21 of this CAFO.

31. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

32. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 29, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

33. Respondent certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

34. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

35. The terms of this CAFO bind Respondent, its successors, and assigns.

36. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

37. Each party agrees to bear its own costs and attorney's fees in this action.

38. This CAFO constitutes the entire agreement between the parties.


Mill Valley Recycling, LLC, Respondent

12-12-11
Date


Mill Valley Recycling, LLC
By: Robert Teich
Its: Owner

United States Environmental Protection Agency, Complainant

12/23/11
Date


Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Mill Valley Recycling, LLC
Docket No. CAA-05-2012-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-28-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: Mill Valley Recycling, LLC
Docket No.**

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DEC 30 2011

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0006 the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Joanne Beck, Owner
Mill Valley Recycling, LLC
1006 South Barclay Street
Milwaukee, Wisconsin 53204

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604


I also certify that I mailed a correct copy of the CAFO by first-class mail to:

William Baumann, Chief
Compliance and Enforcement Section
Bureau of Air Management (AM/7)
Wisconsin Department of Natural Resources
101 S. Webster Street, P.O. Box 7921
Madison, Wisconsin 53702

Michael Maistelman
Maistelman & Associates, LLC
5027 W. North Avenue
Milwaukee, Wisconsin 53208

**Consent Agreement and Final Order
In the Matter of: Mill Valley Recycling, LLC
Docket No.**

On the 30 day of December 2011.



Loretta Shaffer
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7673 8996

2011 DEC 30 10:15
MILL VALLEY RECYCLING
SAN FRANCISCO, CA 94133