

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2020-0028</b>
	)	
<b>American Fire Technologies</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Wilmington, North Carolina</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
<hr/>	)	

**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 CAA), 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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is American Fire Technologies (AFT), a corporation doing business in North Carolina.

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 the 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. In accordance with Section 604 of the CAA, EPA promulgated the requirements for the Production and Consumption Controls, found in the Code of Federal Regulations at 40 C.F.R Part 82, Subpart A (Subpart A).

10. Subpart A, at 40 C.F.R § 82.1(a), states “The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 602, 603, 604, 605, 606, 607, 614 and 616 of the Clean Air Act Amendments of 1990, Public Law 101-549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transshipments and used controlled substances) of certain ozone-depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone-depleting substances with non-Parties.”

11. Subpart A, at 40 C.F.R § 82.1(b), states “This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports or exports a controlled product.”

12. Subpart A, at 40 C.F.R § 82.3, states “Controlled substance means any substance listed in appendix A or appendix B to this subpart.... Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance

is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a “controlled substance.” .... Controlled substances are divided into two classes, Class I in appendix A to this subpart, and Class II listed in appendix B to this subpart. Class I substances are further divided into eight groups, Group I, Group II, Group III, Group IV, Group V, Group VI, Group VII, and Group VIII, as set forth in appendix A to this subpart.

13. Subpart A, at 40 C.F.R § 82.3, states “Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with [exemptions not relevant to this matter]...”

14. Subpart A, at 40 C.F.R § 82.3, states “Importer means any person who imports a controlled substance or a controlled product into the United States. “Importer” includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

- (1) The consignee;
- (2) The importer of record;
- (3) The actual owner; or
- (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.”

15. Subpart A, at 40 C.F.R § 82.3, states “Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political

subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.”

16. Appendix A to Subpart A lists Halon 1301 (CF<sub>3</sub> Br-Bromotrifluoromethane) as a Class I, Group II Controlled Substance.

17. Subpart A, at 40 C.F.R § 82.4(j), states “Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, without having received a non-objection notice from the Administrator in accordance with §82.13(g)(2) and (3). A person who receives a non-objection notice for the import of an individual shipment of used controlled substances may not transfer or confer the right to import, and may not import any more than the exact quantity, in kilograms, of the used controlled substance cited in the non-objection notice. Every kilogram of importation of used controlled substance in excess of the quantity cited in the non-objection notice issued by the Administrator in accordance with §82.13(g)(2) and (3) constitutes a separate violation.

18. Subpart A, at 40 C.F.R § 82.13(g), states “Importers of class I controlled substances during a control period must comply with record-keeping and reporting requirements specified in this paragraph (g).

(1) Recordkeeping—Importers. Any importer of a class I controlled substance (including used, recycled and reclaimed controlled substances) must maintain the following records: specified in paragraphs (g)(1)(i)-(xxi), as applicable.

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in §82.3, except for Group II used controlled substances shipped in aircraft halon bottles for hydrostatic testing, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition: specified in paragraphs (g)(2)(i)-(xiv), as applicable.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

20. AFT is a privately owned corporation specializing in the integration of fire protection, detection management, and design, located at 2120 Capital Drive, Wilmington, North Carolina. AFT is a division of The Hiller Companies, Inc.

21. AFT is a “person” as defined in Subpart A, at 40 C.F.R. § 82.3.

22. AFT is subject to requirements at 40 C.F.R. Part 82, Subpart A because AFT is a person that imports a controlled substance.

23. On February 7, 2020, The Hiller Companies, Inc., doing business as AFT, executed a Customs Power of Attorney form granting Allports Customs Brokers, Inc. (Allports) power of attorney to act as AFT’s agent.

24. The Customs Power of Attorney form allowed Allports to perform various functions related to the importation, transportation, or exportation of any merchandise in or through Customs territory shipped to, consigned by or to AFT.

25. According to information provided to EPA by AFT and entry records from U.S. Customs and Border Patrol, on February 14, 2020, AFT, with Allports acting as AFT’s agent, imported 2282 pounds (1035.1 kilograms) of Halon 1301 from Kingston, Jamaica to the Port of Miami, Florida.

26. For the import described in paragraph 25, AFT failed to submit a petition to EPA as required by 40 C.F.R § 82.13(g)(2).

27. AFT's failure to submit the petition described in paragraph 18 is a violation of Subpart A, at 40 C.F.R §§ 82.4(j) and 82.13(g).

**Civil Penalty**

28. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and AFT's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$57,397.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$57,397 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov)

Kathleen Schnieders  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[schnieders.kathleen@epa.gov](mailto:schnieders.kathleen@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

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

33. 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 pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

34. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [schnieders.kathleen@epa.gov](mailto:schnieders.kathleen@epa.gov) (for Complainant), and [cbusian@aft.net](mailto:cbusian@aft.net) and [rhunter@hillercompanies.com](mailto:rhunter@hillercompanies.com) (for Respondent).

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

36. The effect of the settlement described in paragraph 35, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 25 of this CAFO.

37. 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.

38. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 35, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

39. Respondent certifies that it is complying fully with requirements for the Production and Consumption Controls, found in the Code of Federal Regulations at 40 C.F.R. Part 82, Subpart A (Subpart A).

40. 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 CAA, 42 U.S.C. § 7413(e).

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

42. 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.

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

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



**American Fire Technologies, Respondent**

07/14/20  
Date

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Paul Hayes (Jul 14, 2020 08:07 EDT)  
Paul Hayes, General Manager  
American Fire Technologies

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**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

**MICHAEL  
HARRIS**

 Digitally signed by MICHAEL  
HARRIS  
Date: 2020.07.22 09:28:53 -05'00'

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: American Fire Technologies**  
**Docket No. CAA-05-2020-0028**

**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.

\_\_\_\_\_  
Date

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2020.08.07  
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Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5