



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 08 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Leon Roditi, President
H.G. Refrigeration Supply, Inc.
3575 NW 60th Street
Miami, Florida 33142

RE: H.G. Refrigeration Supply, Inc.
Consent Agreement and Final Order
Docket Number CAA-04-2016-1500(b)

Dear Mr. Roditi:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves this case. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on that date.

Pursuant to the Final Order of the CAFO, H.G. Refrigeration Supply, Inc. must pay the civil penalty within thirty (30) days of the date the CAFO was filed. Your check must display the docket number referenced above.

Please direct any questions regarding this case to Joanna Glowacki, Associate Regional Counsel, (312) 353-3757.

Sincerely,

A handwritten signature in cursive script, appearing to read "Saundi J. Wilson".

Saundi J. Wilson
Paralegal Specialist
Office of Air, Pesticides,
and Toxics Legal Support
Office of Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of:) Docket No. CAA-04-2016-1500(b)
)
H.G. Refrigeration Supply, Inc.) Proceeding to Assess a Civil Penalty
Miami, FL,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

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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 Air, Pesticide, and Toxics Management Division, U.S. Environmental Protection Agency (EPA), Region 4.
3. Respondent is H.G. Refrigeration Supply, Inc., (H.G.) a corporation doing business in Florida.
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 605 of the CAA, 42 U.S.C. § 7671d, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart A, applicable to production and consumption of ozone-depleting substances. The purpose of the regulations is to phase out the production, and restrict the use of, class II substances in accordance with the Montreal Protocol.

10. 40 C.F.R. § 82.1(b) states that Subpart A applies to anyone who imports a controlled substance.

11. 40 C.F.R. § 82.3 defines “controlled substance” as, “any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture.” Controlled substances are divided into two classes, Class I and Class II.

12. 40 C.F.R. § 82.3 refers to “Class II” as controlled substances “listed in appendix B to this subpart.”

13. 40 C.F.R. § 82.3 defines “consumption allowance” as, “the privileges granted by this subpart to produce and import controlled substances.” The definition also states that “[a] person's consumption allowances for class II controlled substances are the total of the allowances obtained under §§ 82.19 and 82.20, as may be modified under § 82.23.”

14. Under 40 C.F.R. § 82.3, “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.”

15. 40 C.F.R. § 82.3 defines “importer” as, “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, and can include, as appropriate, the consignee, importer of record, actual owner or transferee.

16. 40 C.F.R. § 82.3 defines “person” as, “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.”

17. Appendix B of 40 C.F.R. § 82 Subpart A includes the compound monochlorodifluoromethane and abbreviates it as HCFC-22.

18. 40 C.F.R. § 82.15(b)(1) states that no person may import class II controlled substances for which EPA has apportioned baseline production and consumption allowances, in

excess of the quantity of unexpended consumption allowances held by the importer for that control period.

19. Under 40 C.F.R. § 82.19, baseline consumption allowances for class II controlled substances were apportioned to selected persons. This regulation assigned H.G. a baseline allowance for HCFC-22 of 40,068 kilograms.

20. 40 C.F.R. § 82.16 has a phaseout schedule for class II controlled substances. That schedule states that in 2012, persons must reduce the consumption of HCFC-22 to 17.7% of their apportioned baseline amount. This amount equates to 7,092 kilograms for H.G.

21. 40 C.F.R. § 82.24(c)(1)(vi) states that the importer must quarterly report to EPA the quantity of class II controlled substances imported for that quarter and totaled by chemical for the control period to date.

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred between January 12, 2009, and December 5, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

23. 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.

24. 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

25. H.G. owns and operates a facility that sells refrigeration and air conditioning parts and equipment (Facility) at 3575 NW 60th Street, Miami, Florida.

26. On January 15, 2013, H.G. faxed its fourth quarter Class II Controlled Substance Report to U.S. EPA. That report states that H.G. imported 11,968 kg of HCFC-22 on November 20, 2012 from China. The Customs Entry Summary Number is T9400586093 and the Importer Number is 592244881.

27. H.G. imported 4,876 kilograms of HCFC-22 more than its allowed amount in 2012, in violation of 40 C.F.R. § 82.16 and 82.15(b)(1).

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, Respondent's cooperation and ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$ 13,707.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,707 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 (a non-U.S. Postal Service will not deliver mail to P.O.

Boxes) 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 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:

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

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

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. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: glowacki.joanna@epa.gov (for Complainant), and john@mcnallylawpa.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

36. 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.

37. 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.

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

39. 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).

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

41. 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.

42. Each party agrees to bear its own costs and attorneys' fees in this action.

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

H.G. Refrigeration Supply, Inc., Respondent

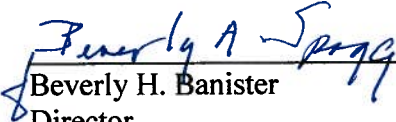
August 03 2015
Date



Leon Roditi, President
H.G. Refrigeration Supply, Inc.

United States Environmental Protection Agency, Complainant

9/30/2015
Date



Beverly H. Banister
Director
Air, Pesticide, and Toxics Management Division
U.S. Environmental Protection Agency, Region 4

Consent Agreement and Final Order
In the Matter of: H.G. Refrigeration Supply, Inc.
Docket No. CAA-04-2016-1500(b)

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.

October 5, 2015
Date

Tanya Floyd
Tanya Floyd
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 4

In the Matter of: H.G. Refrigeration Supply, Inc.
Docket Number: CAA-04-2016-1500(b)

CERTIFICATE OF SERVICE

I certify that this day I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on October 8, 2015, in the manner indicated to the addressees listed below.

Copy by Certified Mail
Return Receipt Requested:

Leon Roditi
H.G. Refrigeration Supply, Inc.
3575 NW 60th Street
Miami, Florida 33142

Copy by E-Mail to Counsel
for Respondent

John McNally
john@mcnallylawpa.com

Copy by E-mail to
Complainant:

Joanna Glowacki
glowacki.joanne@epa.gov

Copy by E-mail to Region 4
Regional Judicial Officer:

Tanya Floyd
floyd.tanya@epa.gov

Copy by E-mail to Region 5
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Copy by Email to Region 5
Regional Hearing Clerk

LaDawn Whitehead
whitehead.ladawn@epa.gov

Dated: October 8, 2015

for Claudette A. Hanes
Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511