



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAY 09 2008

Ref: 8ENF-L

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Mark Douglas Bond, President
Wasatch Metal Recycling
401 West 900 South
Salt Lake City, UT 84101

Re: Complaint and Compliance Order.
Docket Nos. CAA-08-2008-0016
CAA-08-2008-0017

Dear Mr. Bond:

Enclosed are two documents. The first is an administrative complaint seeking penalties for Wasatch Metal Recycling's ("Wasatch") violations of certain requirements of the regulations implementing the Clean Air Act ("CAA"). The second is an administrative order requiring that Wasatch establish and maintain compliance with those same requirements.

Complaint and Notice of Opportunity for Hearing

You are hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413 (d)(1)(B), as amended on November 15, 1990. Enclosed with this Complaint are the Consolidated Rules of Practice, the Stationary Source Civil Penalty Policy, and Complainant's Statement as to Determination of Proposed Penalty, which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that Wasatch failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. These regulations, which are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction) require that a person who takes the final step in the disposal process of small appliances must either recover all remaining refrigerant or verify that the refrigerant has been properly evacuated previously and maintain specific records relating to the proper recovery. The regulations found at 40 C.F.R. Part 82, Subpart F also require that those disposing of larger

appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business.

You have the right to request a hearing regarding the matters set forth in this Complaint. You are encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If you do not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer, you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. You may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. Your signature on a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which you must submit your written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

Compliance Order

In addition, you are hereby served with a Compliance Order (referred to as the "Order") pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended.

EPA alleges in the Order that you failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. The requirements of these regulations, which are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction), are set forth in the "Complaint and Notice of Opportunity for Hearing" section, above. The Order requires you to comply with 40 C.F.R. § 82.156(b) and 40 C.F.R. § 82.156(f).

Violation of the Order may lead to the commencement of a civil action for permanent or temporary injunction, or to assessment and recovery of a civil penalty of not more than \$32,500 per day for each violation, or both, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). In issuing this Order, EPA does not waive its right to seek injunctive relief or civil penalties of up to \$32,500 per day for each day of violation under Section 113(b) of the CAA for any and all violations, or both injunctive relief and civil penalties.

This Order will become effective thirty (30) calendar days from the date of your receipt of the Order, allowing you thirty (30) days in which to request a conference with EPA. Whether or not you request a conference, you may confer informally with EPA concerning the alleged

violations. You may wish to be represented by counsel at the conference.

EPA Contact

If you have any legal questions or would like to discuss the possibility of settlement, please contact:

Dana J. Stotsky (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6905.

EPA urges your prompt attention to these matters.

Sincerely,

Michael T. Bisner
for

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA Stationary Source Civil Penalty Policy
4. Complainant's Statement as to Determination of Proposed Penalty
5. Compliance Order

cc w/ Enclosures 1, 4, and 5:

Jeffrey Kimes, 8ENF-AT
Dana Stotsky, 8ENF-L

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. CAA-08-2008-0017

2008 MAY -9 PM 1:57

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Wasatch Metal Recycling)
401 West 900 South)
Salt Lake City, UT 84101)
)
Respondent.)
_____)

COMPLIANCE ORDER

STATUTORY AUTHORITY

This COMPLIANCE ORDER (referred to as the "ORDER") is issued pursuant to Section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. Section 7413(a)(3)(B), as amended. This ORDER is issued by the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice of the United States Environmental Protection Agency ("EPA"), Region 8, who has been properly delegated the authority by the Administrator of the EPA to proceed with this action.

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference into this COMPLIANCE ORDER:

1. Wasatch Metal Recycling ("Respondent" or "Wasatch"), is a business in good standing and registered to conduct business in the State of Utah with the Utah Secretary of State's Office.
2. At all times relevant to this action, Respondent, with offices located at 401 West 900 South, Salt Lake City, UT 84101, operates its facility located at 205 West 3300 South, Salt Lake City, UT 84115 ("the facility.")
3. At all times relevant to this action, Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.
4. On or about December 17, 2007 ("the inspection"), Mssrs. Jeffrey Kimes and David Cobb, authorized EPA inspectors, ("the Inspector"), conducted an inspection of Respondent's facility, with the consent of Respondent, to determine compliance with the CAA and its implementing regulations.

5. During the inspection referenced in Paragraph 4 above, the EPA inspectors observed that Respondent takes the final step in the disposal of appliances and small appliances normally containing refrigerants.

6. During the inspection referenced in Paragraph 4 above, the EPA inspectors observed that Wasatch does not recover refrigerant from small appliances prior to disposal.

7. During the inspection referenced in Paragraph 4 above, EPA inspectors found that on or about December 17, 2007, Wasatch accepted for disposal two small appliances normally containing refrigerant without verification that refrigerant which had not leaked previously had been properly evacuated from the appliance in accordance with applicable EPA regulations.

8. During the inspection referenced in Paragraph 4 above, the EPA inspectors observed that Wasatch disposed of one large appliance without having at least one piece of certified, self-contained recovery or recycling equipment available at its place of business, as required by applicable EPA regulations.

STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into the Counts of this COMPLIANCE ORDER:

9. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g, found at 40 C.F.R. § 82.152, Definitions, an "appliance" is defined as 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.

10. Under the regulations referenced in Paragraph 9 above, a "small appliance" is defined as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

11. Under the regulations reference in Paragraph 9 above, "disposal" is defined as the process leading to and including the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water.

12. Under the regulations 40 C.F.R. § 82.156(f), persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, MVACs (motor vehicle air conditioners), or MVAC-like appliances, must either recover all remaining refrigerant or verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must

include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. 82.156(g) or (h), as applicable. This statement 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.

13. Under the regulations found at 40 C.F.R. 82.156(b) all persons disposing of appliances except small appliances, MVACs, and MVAC-like appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business.

DESCRIPTION OF VIOLATIONS

COUNT I

14. During the inspection the EPA inspectors observed Respondent taking the final step in the disposal of appliances and small appliances normally containing refrigerants.

15. During the inspection the EPA inspectors observed that Respondent failed to recover refrigerant from stainless steel refrigeration equipment labeled as containing R408a refrigerant, a small appliance, prior to disposal and also observed that Respondent failed to recover refrigerant from refrigeration equipment that included condenser coils and copper tubing normally containing refrigerant, a small appliance, prior to disposal.

16. Respondent took the final step in the disposal process of the two small appliances described in the preceding paragraph without either recovering the refrigerant or verifying that refrigerant had been properly removed in violation of 40 C.F.R. §§ 82.156(f)(1) and (2).

17. Respondent, by failing to comply with conduct required by 40 C.F.R. § 82.156, has engaged in conduct prohibited by regulation. 40 C.F.R. § 82.154(a).

COUNT II

18. During the inspection the EPA inspectors observed Respondent disposed of one large appliance without having at least one piece of certified, self-contained recovery or recycling equipment available at its place of business in violation of 40 C.F.R. § 82.156(b).

19. The CAA regulations governing Stratospheric Ozone Protection require Respondent to have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business when they dispose large appliances.

20. Respondent, by failing to comply with conduct required by 40 C.F.R. § 82.154 and 40 C.F.R. § 82.156, has engaged in conduct prohibited by regulation. 40 C.F.R. § 82.154(e).

COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. Section 7413(a)(3)(B), and upon the basis of available information, EPA hereby issues the following ORDER:

21. Within thirty (30) days of receipt of this COMPLIANCE ORDER, for every small appliance, room air conditioner, MVAC or MVAC-like appliance accepted, the Respondent must either recover any remaining refrigerant in accordance with 40 C.F.R. Sections 82.156(f)(1); or verify that the refrigerant has been previously evacuated from the appliance or shipment of appliances in accordance with 40 C.F.R. Section 82.156(f)(2). Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered in accordance with 40 C.F.R. Section 82.156(g) or (h) as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that the refrigerant will be removed prior to delivery. Copies of these signed verification statements must be maintained on site for three years in accordance with 40 C.F.R. Section 82.166(i) and (m). The Respondent must maintain for three years copies of customer invoices and receipts documenting the sale or transfer of appliances, motor vehicles and recovered refrigerants.

22. Within thirty (30) days of receipt of this COMPLIANCE ORDER, if Respondent accepts any appliances that are not small appliances, MVACs, nor MVAC-like appliances, Respondent must maintain at least one piece of certified, self-contained, recovery or recycling equipment at the Respondent facility in accordance with 40 C.F.R. 82.156(b) and evacuate appliances in accordance with 40 C.F.R. 82.156(a)(3).

23. In accordance with 40 C.F.R. Section 82.154(a), Respondent may not knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances while disposing of appliances. The term "appliance" is defined in 40 C.F.R. Section 82.152(a) as any device which contains and uses a Class I or Class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer. The term "motor vehicle air conditioner" is defined in 40 C.F.R. Section 82.152(a) as any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. part 82, subpart B.

24. The Respondent shall provide EPA with confirmation that the above requirements of CAA Section 608 and 40 C.F.R. Part 82 have been met within thirty (30) days of receipt of this COMPLIANCE ORDER by providing the Agency with:

- a) a complete narrative description of the process that will be used by Wasatch to verify the proper recovery of refrigerant from appliances and motor vehicles;
- b) if a verification statement form will be provided to suppliers to verify refrigerant recovery, a blank copy of this statement form, including fields to enter the name and address of the person who recovered the refrigerant and the date recovered;

- c) if contracts are provided to suppliers to verify refrigerant recovery, a blank copy of such a contract;
- d) a completed "Refrigerant Recovery or Recycling Device Acquisition Certification Form" (OMB #2060-0256) if Wasatch obtains recovery equipment and intends to recover refrigerants from appliances and motor vehicles;
- e) a blank copy of the log that will be used by Wasatch if Wasatch intends to remove refrigerants from small appliances or appliances (such log should include a signature of the person removing the refrigerant, the date removed, a description of the appliance, model and serial number); and,
- f) copies of all current, signed and dated supplier contracts or agreements that the refrigerant will be removed prior to delivery.

All submissions under this Paragraph 24 shall be mailed to:

Jeffrey Kimes, 8ENF-AT
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

ENFORCEMENT

25. Issuance of this ORDER does not preclude any other action by EPA to redress past or future violations of the CAA, including either of the following:

- a. An administrative penalty complaint pursuant to Section 113(d) of the CAA, 42 U.S.C. Section 7413(d), for civil penalties of up to \$32,500 per day for each violation during the period the facility is not in compliance; or
- b. A civil action pursuant to Section 113(b) of the CAA, 42 U.S.C. Section 7413(b), for injunctive relief or civil penalties of up to \$32,500 per day for each violation during the period the facility is not in compliance, or both.

26. Pursuant to Section 120 of the CAA, 42 U.S.C. Section 7420, EPA is also authorized to assess noncompliance penalties to recover the economic benefit which any person obtained by not complying with the CAA.

27. In addition, under Section 306(a) of the CAA, 42 U.S.C. Section 7606(a), the regulations promulgated at 40 C.F.R. Part 15; and Executive Order 11738, facilities used in federal contracts, grants, or loans must be in full compliance with the CAA and all implementing regulations. Violation of the CAA may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

28. Pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. Section 7413(a)(3), failure to comply with this ORDER may lead to a civil action to obtain compliance or an action for civil and criminal penalties.

OPPORTUNITY FOR CONFERENCE

29. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. Section 7413(a)(4), we are offering the Respondent an opportunity for a conference to discuss this ORDER. The request for such a conference must be made no later than thirty (30) calendar days from the date of receipt of this ORDER. If you wish to make arrangements for a conference, please contact Jeffrey Kimes, Environmental Scientist, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6445. By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the CAA.

EFFECTIVE DATE

This ORDER shall become effective thirty (30) calendar days after receipt by Respondent of this ORDER.

Date: 5/8/08

Michael T. Biner
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

bcc: Dana Stotsky, 8ENF-L
Jeffrey Kimes, 8ENF-AT