



MAR 16 2007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 MAR 19 PM 2:27
REGIONAL HEARING
CLERK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Manuel Ortega
Cary's Dry Cleaner
631 Willow Avenue
Hoboken, NJ 07030

Re: Complaint and Notice of Opportunity for a Hearing, CAA-02-2007-1208 with Offer of Settlement

Dear Mr. Ortega:

On June 15, 2006, the U.S. Environmental Protection Agency (EPA) inspected Cary's Dry Cleaner, a dry cleaning facility located at 631 Willow Avenue, Hoboken, NJ 07030. EPA determined Cary's Dry Cleaner to be in violation of the federal Dry Cleaning Regulations promulgated under the Clean Air Act. As a result, EPA issues the enclosed Complaint, which proposes a penalty of one thousand four hundred seven dollars (\$1,407) for these violations.

EPA encourages you to resolve the Complaint informally without filing an Answer to the Complaint. To encourage an expeditious settlement with you, EPA will reduce the proposed penalty by 50%, provided you sign the enclosed Consent Agreement and Final Order (CAFO) and submit a check in accordance with the instructions in the CAFO within thirty days of receipt of this letter.

Settling this matter within the thirty (30) days and paying the reduced penalty will save you the time and money associated with writing and filing a written Answer, negotiating a settlement, and/or going to hearing.

If you wish to discuss the Complaint or the CAFO, within the thirty days provided for a reduced settlement, please call Venkata Rao, an Enforcement Officer in my Division at (212) 637-4053. If you wish to discuss formally contesting the Complaint, please contact John Dolinar, Esq., in EPA Region 2's Office of Regional Counsel at (212) 637-3204 or in writing at the address provided below.

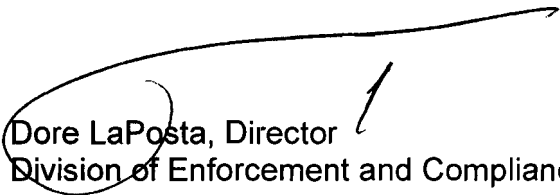
If you choose to formally contest any material fact in the Complaint or the proposed penalty in the Complaint, you must file a written Answer to the Complaint with the Regional Hearing Clerk, at the address listed below. If you wish to request a hearing, you must include the request in the Answer. The Consolidated Rules, which are also enclosed with this letter, provide that you may lose your opportunity for hearing if an Answer is not filed within the specified period. Please refer to these Rules if you choose to file an Answer and enter into formal administrative proceedings.

Internet Address (URL) • <http://www.epa.gov>

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Failure to resolve this matter, either formally or informally may result in EPA filing a motion for default judgment. If a motion for default judgment is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after issuance of a Final Order.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures:

Complaint and Notice of Opportunity for Hearing CAA 02-2007-1208
Consent Agreement and Final Order (CAFO)
40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative
Assessment of Civil Penalties and the Revocation or Suspension of Permits
(Consolidated Rules)
EPA Region 2 Penalty Policy for Dry Cleaners
U.S. EPA Small Business Resources, Information Sheet

cc: Regional Hearing Clerk (With: Original Complaint with Certificate of Service and one copy of Complaint with Certificate of Service)

Karen Maples
Regional Hearing Clerk
United States Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Counsel on behalf of EPA:

John Dolinar, Esq.
Office of Regional Counsel
Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

bcc: V.Rao, DECA-ACB
J. Dolinar, ORC-AIR
ACB Reading File
ORC Reading File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 MAR 19 PM 2:27
REGIONAL HEARING
CLERK

In the Matter of:
Cary's Dry Cleaners
Respondent

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING
CAA-02-2007-1208

In a proceeding under Section 113(d) of the
Clean Air Act, 42 U.S.C. § 7413(d)

COMPLAINT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq., to Cary's Dry Cleaners (Respondent). The Complaint proposes a penalty of one thousand four hundred seven dollars (\$1,407) for Respondent's violations of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," 40 C.F.R. Part 63, Subpart M (Perchloroethylene Dry Cleaning regulations). EPA promulgated the Perchloroethylene Dry Cleaning regulations pursuant to Sections 112 and 114 of the Clean Air Act.

PRELIMINARY STATEMENTS

If you wish to discuss the Complaint, you should contact the EPA Enforcement Officer, Venkata Rao, at (212) 637-4053, or at the following address:

Venkata Rao, Enforcement Officer
Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, NY 10007-1866

Further details as to how to request an informal settlement conference to resolve this matter are provided in this Complaint in a section entitled "Informal Settlement."

If you wish to formally contest any material fact in the Complaint or the penalty proposed in the Complaint, you must file a written answer (Answer) to the Complaint with the Regional Hearing Clerk within thirty (30) days after you receive the Complaint. The

Answer must be filed, in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 (Consolidated Rules). If you wish to request a hearing, you must include this request in the Answer. If you choose to file an Answer, you must file it and a copy of it with the hearing clerk at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

If you file an Answer, you must also send a copy of the Answer to the EPA. Also, you must send, to the attention of EPA counsel, copies of an Answer, if any, as well as copies of all other papers filed with the Regional Hearing Clerk regarding this matter. EPA counsel in this matter can be contacted at the following address and phone number:

John Dolinar, Esq.
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866
212-637-3204

Further details relating to how to file an Answer are provided in this Complaint in a section entitled "Formally Answering the Complaint." You may also call either the EPA Enforcement Officer or the EPA Counsel to discuss any matter relating to this Complaint, including the procedures for filing an Answer.

At any point in the informal settlement process or formal administrative process, you may choose to pay the proposed penalty. You can also choose to pay this penalty without filing an Answer, or requesting an informal settlement conference. Instructions for making payment are set forth in this Complaint in a section entitled "Payment of Penalty in Full."

If you are represented by legal counsel in this matter, your counsel should contact EPA.

LEGAL BACKGROUND

1. The Perchloroethylene Dry Cleaning regulations define the term "dry cleaning facility" to mean an establishment with one or more dry cleaning systems. 40 C.F.R. § 63.321.

2. The Perchloroethylene Dry Cleaning regulations define the term "dry cleaning system" to include a "dry-to-dry" machine and its ancillary equipment. 40 C.F.R. § 63.321.

3. The Perchloroethylene Dry Cleaning regulations define the term "construction" to mean the fabrication (onsite), erection or installation of a dry cleaning system. 40 C.F.R. § 63.321.

4. The Perchloroethylene Dry Cleaning regulations define the term "area source" to include any perchloroethylene dry cleaning facility with one or more "dry-to-dry" machines that has a total yearly perchloroethylene consumption equal to or less than 2,100 gallons. 40 C.F.R. § 63.321.

APPLICABILITY OF THE REGULATIONS

5. The Perchloroethylene Dry Cleaning regulations are applicable to the owner or operator of each dry cleaning facility that uses perchloroethylene. 40 C.F.R. § 63.320(a).

6. The Perchloroethylene Dry Cleaning regulations specify different requirements for major sources, sources that consume more than 2,100 gallons per year and area sources, sources that consume 2,100 or less gallons per year.

7. Each dry cleaning system installed on or after December 9, 1991 is required to comply with the requirements of the Perchloroethylene Dry Cleaning regulations beginning on September 23, 1993 or immediately upon start-up, whichever is later, except dry cleaning systems that complied with Section 112(i)(2) of the Clean Air Act, which required compliance with the requirements of the Perchloroethylene Dry Cleaning regulations by September 23, 1996. 40 C.F.R. § 63.320(b).

8. Each dry cleaning system that was installed on or after December 9, 1991 and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993 was required to comply with many of the Perchloroethylene Dry Cleaning regulations by September 22, 1993, but must comply with all of the Perchloroethylene Dry Cleaning regulations by no later than September 23, 1996. 40 C.F.R. § 63.320(c).

9. The Perchloroethylene Dry Cleaning regulations specify different requirements for dry cleaning facilities, depending upon a variety of factors, including but not limited to, the type of system and ancillary equipment associated with the system, the installation date and the amount of perchloroethylene consumption.

REGULATORY REQUIREMENTS

10. The Perchloroethylene Dry Cleaning regulations require that the owner or operator of an affected facility store all perchloroethylene and wastes that contain perchloroethylene in solvent tanks or solvent containers with no perceptible leaks. 40 C.F.R. § 63.322(j).

11. The Perchloroethylene Dry Cleaning regulations at 40 C.F.R. § 63.324(d) require that the owner or operator of a dry cleaning facility keep receipts of perchloroethylene purchases and logs containing the following information and maintain such documents and information onsite for a period of five (5) years and show them to EPA upon request:

- a. The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log. 40 C.F.R. § 63.324(d)(1);
- b. The calculation and result of the yearly perchloroethylene consumption determined on the first day of each month, as specified in Section 63.323(d). 40 C.F.R. § 63.324(d)(2);
- c. The dates when the dry cleaning system components are inspected for perceptible leaks, as specified in Sections 63.322(k) or (l), and the name

or location of dry cleaning system components where perceptible leaks are detected. 40 C.F.R. § 63.324(d)(3);

- d. The date and temperature sensor monitoring results, as specified in Section 63.323 if a refrigerated condenser is used to comply with Sections 63.322(a) or (b). 40 C.F.R. § 63.324(d)(5).

FINDINGS OF FACT

12. Respondent is the owner and/or operator of a dry cleaning facility located at 631 Willow Avenue, Hoboken, NJ 07030 (Facility), which is a "dry cleaning facility" as defined in 40 C.F.R. § 63.321.

13. On June 15, 2006, an authorized EPA inspector inspected the Facility to determine whether it complied with the Perchloroethylene Dry Cleaning regulations (Inspection).

14. During the EPA Inspection, the EPA inspector observed Respondent operating a dry-to-dry machine equipped with a refrigerated condenser, a "dry cleaning system," as defined in 40 C.F.R. § 63.321.

15. According to records provided by Respondent to the EPA inspector, the Facility uses perchloroethylene in its dry cleaning system.

16. According to records provided by Respondent to the EPA, the total perchloroethylene consumption of the Facility is less than 140 gallons per year.

17. During the EPA Inspection, the EPA inspector found that Respondent failed to store all perchloroethylene and wastes that contain perchloroethylene in solvent tanks or solvent containers with no perceptible leaks, as required by 40 C.F.R. § 63.322(j).

18. During the EPA Inspection, the EPA inspector found that Respondent failed to keep receipts of perchloroethylene purchased onsite for a period of five (5) years, and failed to show EPA upon request these receipts, as required by 40 C.F.R. § 63.324(d).

19. During the EPA Inspection, the EPA inspector found that Respondent failed to keep a log of the volume of perchloroethylene purchased each month and maintain such

log onsite for a period of five (5) years, and failed to show EPA upon request this log, as required by 40 C.F.R. § 63.324(d)(1).

20. During the EPA Inspection, the EPA inspector found that Respondent failed to keep a log of the yearly consumption of perchloroethylene and maintain such log onsite for a period of five (5) years, and failed to show EPA upon request this log, as required by 40 C.F.R. § 63.324(d)(2).

21. During the EPA Inspection, the EPA inspector found that Respondent failed to keep a log of the dates on which the dry cleaning system components were inspected for perchloroethylene perceptible leaks and the name or location of components where perceptible leaks were detected and maintain such log onsite for a period of five (5) years, and failed to show EPA upon request this log, as required by 40 C.F.R. § 63.324(d)(3).

22. During the EPA Inspection, the EPA inspector found that Respondent failed to keep a log of the date and temperature monitoring results for the refrigerated condenser and maintain such log onsite for a period of five (5) years, and failed to show EPA upon request this log, as required by 40 C.F.R. § 63.324(d)(5).

CONCLUSIONS OF LAW

From the Findings of Fact set forth above, EPA finds that the Respondent is an area source. 40 C.F.R. § 63.320(h).

From the Findings of Fact set forth above, EPA found that, at the time of the EPA Inspection conducted on June 15, 2006, Respondent had failed to comply with 40 C.F.R. § 63.322(j), and 40 C.F.R. § 63.324(d) (including d(1), (2), (3), and (5)).

Failure to comply with 40 C.F.R. § 63.322(j), is a violation of the Perchloroethylene Dry Cleaning regulations and Section 112 of the Act.

Failures to comply with 40 C.F.R. § 63.324(d) ((including d(1), (2), (3), and (5)) are violations of the Perchloroethylene Dry Cleaning regulations and Sections 112 and 114 of the Act.

PROPOSED PENALTY

For violations of the Act, Section 113(d) of the Act provides that EPA may assess a civil administrative penalty of up to \$32,500 per day for each violation of the Act. Section 113(e) of the Act requires EPA to consider the following factors in determining the amount of penalty to be assessed: the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require.

EPA calculated the proposed penalty under the Region 2 Dry Cleaner Penalty Policy. A copy of this penalty policy is enclosed with this Complaint. An explanation of EPA's application of the Region 2 Dry Cleaner Penalty Policy to the violations alleged in this Complaint is set forth below:

EPA determined that the Facility is a small area source, as defined by the Region 2 Dry Cleaner Penalty Policy because the Facility consumes less than 140 gallons of perchloroethylene a year. Therefore, EPA proposes penalties for Respondent's violations using the penalty figures given in the penalty policy for a small area source.

Count I - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for a violation of 40 C.F.R. § 63.322(j). Respondent's violation of this requirement is described above in paragraph 17. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

Count II - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for a violation of 40 C.F.R. § 63.324(d). Respondent's violation of this

requirement is described above in paragraph 18. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

Count III - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for the violation of 40 C.F.R. § 63.324(d)(1). Respondent's violation of this requirement is described above in paragraph 19. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

Count IV - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for the violation of 40 C.F.R. § 63.324(d)(2). Respondent's violation of this requirement is described above in paragraph 20. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

Count V - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for a violation of 40 C.F.R. § 63.324(d)(3). Respondent's violation of this requirement is described above in paragraph 21. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

Count VI - The Region 2 Dry Cleaner Penalty Policy provides that a penalty of \$200 should be assessed for violation of 40 C.F.R. part 63.324(d)(5). Respondent's violation of this requirement is described above in paragraph 22. Therefore, in accordance with the penalty policy, EPA proposes a penalty of \$200 for this violation.

The Adjustment of Civil Monetary Penalties for Inflation 40 C.F.R. Part 19, (Inflation Adjustment Rule), as mandated by the Debt Collection Improvement Act of 1996 (DCIA), requires EPA to adjust its civil monetary penalties for inflation on a periodic basis. EPA developed the Region 2 Dry Cleaner Penalty Policy after an initial 10% Inflation Adjustment Rule was promulgated in 2001. A second inflationary adjustment rule providing for an 17.23% adjustment for inflation, up to \$32,500 per day for each violation, was promulgated on February 13, 2004. In accordance with the Region 2 Dry Cleaner Penalty Policy, EPA calculated an initial penalty of \$1,200. To reflect the February 13, 2004 inflationary adjustment EPA then increased that penalty by 17.23% which resulted in a total proposed penalty of \$1,407 for the violations alleged in this Complaint.

FORMALLY ANSWERING THE COMPLAINT

The Consolidated Rules provide that you can file an Answer to this Complaint by sending it to the Regional Hearing Clerk at the address provided above. In the Answer, you can formally: (1) contest any material facts set forth in the Complaint; (2) contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must include this request for a hearing in the Answer. As stated above, the Answer must be filed with the Regional Hearing Clerk, within thirty (30) days of your receipt of this Complaint.

The Answer, if any, should clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer should also state: (1) the circumstances or arguments which you allege to constitute the grounds of a defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether you request a hearing.

If, within thirty (30) days of receipt of the Complaint, you fail to file an Answer to the Complaint, in accordance with the Consolidated Rules, EPA may file a motion seeking that you be found in default. For the purposes of this matter only, a finding of default constitutes an admission of the facts alleged in the Complaint, as well as a waiver of your right to a hearing. Should a motion for default be granted, the total amount of the proposed penalty may become due and payable by you without further proceedings thirty (30) days after issuance of a Final Order of Default.

INFORMAL SETTLEMENT

EPA encourages you to pursue the possibility of settlement through informal conferences; however, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint. Even if you file an Answer which

requests a hearing, EPA encourages you to confer informally with the EPA concerning the alleged violations and/or the amount of the proposed penalty.

A settlement, if any, in this matter will be drafted as a Consent Agreement and issued as a Final Order.

PAYMENT OF PENALTY IN FULL

You may choose to pay the proposed penalty in full without either filing an Answer, or requesting an informal settlement conference. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number which appears on the first page of this Complaint. The check must be mailed to the Regional Hearing Clerk at a different address than the one listed above.

The address for sending payment is:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
P.O. Box 360188M
Pittsburgh, PA 15251

To notify EPA Region 2 of payment, you must send a copy of your letter transmitting the check and a copy of the check to EPA Counsel, at the address listed above in the section of this Complaint entitled "Preliminary Statements." Payment of the proposed penalty does not relieve Respondent from its responsibility to comply with any and all requirements of the Clean Air Act.

Issued: MARCH 15, 2007



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency Region 2
290 Broadway - 21st Floor
New York, NY 10007-1866

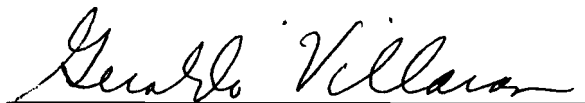
To: Mr. Manuel Ortega, Owner
Cary's Dry Cleaners
631 Willow Avenue
Hoboken, N.J. 07030

bcc: V. Rao, DECA-ACB
J. Dolinar, ORC-AIR
F. Mills, ORC-AIR
Facility File
ACB File

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON MAR 16, 2007, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBER P-7000-1670-0012-2336-3346 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):695

**Mr. Manuel Ortega
Cary's Dry Cleaner
631 Willow Avenue
Hoboken, New Jersey 07030**



Geraldo Villaran