



1 of EPA, Region IX, and pursuant to EPA Regional Order Number R1265.05A, dated August 14,  
2 2003, the Regional Administrator re-delegated that authority to Complainant, the Director of the  
3 Air Division.

4 3. Respondent is Tyler Refrigeration, a division of Carrier Commercial  
5 Refrigeration.

#### 6 B. STATUTORY AND REGULATORY BASIS

7 4. The Clean Air Act Amendments of 1990 added Subchapter VI to the Clean Air  
8 Act, 42 U.S.C. § 7671 *et seq.*, which establishes requirements for a federal stratospheric ozone  
9 protection program.

10 5. Section 605 of the Act, 42 U.S.C. § 7671d, regulates the production and  
11 consumption of “Class II substances”, which are listed at Section 602(b) of the Act, 42 U.S.C. §  
12 7671a(b).

13 6. Under Section 605(c) of the Act, 42 U.S.C. § 7671d(c), the EPA promulgated  
14 regulations, codified at 40 C.F.R. Part 82, Subpart A, that establish standards and set  
15 requirements for the production phase-out and use restriction of Class II substances.

16 7. Among these restrictions, 40 C.F.R. § 82.15(b) forbids the importation of Class II  
17 substances in excess of consumption allowances held by a party (absent highly limited  
18 exemptions involving transshipments, heels, used Class II controlled substances, unexpended  
19 consumption allowances, medical device exemptions, or the use of the Class II substances in a  
20 process resulting in their transformation or destruction – none applies in the present case) and  
21 provides that every kilogram of excess import constitutes a separate violation of 40 C.F.R. Part  
22 82, Subpart A.

#### 23 C. ALLEGED VIOLATIONS

24 8. Respondent, a corporation, is a “person” as that term is defined by Section 302(e)  
25 of the Act, 42 U.S.C. § 7602(e).

26 9. At the time of the allegations made herein, Respondent imported HCFC-22 and  
27 HCFC-124 (collectively, “HCFCs”), refrigerants listed by EPA pursuant to Section 602(b) of the  
28

1 Act, 42 U.S.C. § 7671a(b), and Appendix B to Subpart A of 40 C.F.R. Part 82, as Class II  
2 controlled substances.

3 10. On May 10, 2005, Respondent imported 1,260 kg of HCFCs from Mexico.

4 11. On May 18, 2005, Respondent imported 1,282 kg of HCFCs from Mexico.

5 12. On March 16, 2006, Respondent imported 2,457 kg of HCFCs from Mexico.

6 13. On August 3, 2006, Respondent imported 3,410 kg of HCFCs from Mexico.

7 14. On February 19, 2007, Respondent imported 3,410 kg of HCFCs from Mexico.

8 15. On July 11, 2007, Respondent imported 780 kg of HCFCs from Mexico.

9 16. Respondent's collective importation of 12,599 kg of HCFCs from outside the  
10 United States on the dates listed above in Paragraphs 10 through 15 constitutes 12,599 violations  
11 of Section 605 of the Act, 42 U.S.C. § 7671d, and 40 C.F.R. § 82.15(b).

12 17. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Civil Monetary Penalty  
13 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any  
14 requirement of Subchapter VI of the Act shall be liable to the United States for a civil penalty in  
15 an amount not to exceed \$32,500 for each such violation occurring on or after March 15, 2004.  
16 Under the EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991,  
17 as well as Appendix VIII of the Penalty Policy entitled, "Clean Air Act Civil Penalty Policy  
18 Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding  
19 Allowances Properly Held Under 40 C.F.R. Part 82: Protection of the Stratospheric Ozone," the  
20 violations cited above would merit a total economic benefit-based civil penalty of EIGHTEEN  
21 THOUSAND, EIGHT HUNDRED, AND NINETY-NINE DOLLARS (\$18,899) and a total  
22 gravity-based civil penalty of EIGHTY-FOUR THOUSAND AND SEVEN HUNDRED  
23 DOLLARS (\$84,700), given the nature, circumstances, and extent of the violations alleged.

#### 24 D. EPA'S AUDIT POLICY

25 18. Upon discovering and voluntarily disclosing the violations alleged in Section I.C  
26 of this CAFO, Respondent cooperated fully with EPA in resolving the matters covered by this  
27 Consent Agreement, and took all steps reasonably expected to address and remedy the alleged  
28 violations. Accordingly, EPA agrees to mitigate the gravity-based civil penalty of EIGHTY-

1 FOUR THOUSAND AND SEVEN HUNDRED DOLLARS (\$84,700) proposed in Paragraph  
2 17.

3 19. EPA's Policy on *Incentives for Self-Policing; Discovery, Disclosure, Correction*  
4 *and Prevention of Violations Final Policy Statement*, 65 Fed. Reg. 19617 (April 11, 2000) (the  
5 "Audit Policy") has several important goals, including encouraging greater compliance with the  
6 laws and regulations which protect human health and the environment and reducing transaction  
7 costs associated with violations of the laws EPA is charged with administering. Under the  
8 appropriate circumstances, reductions in gravity-based penalties of up to 100% are available  
9 under the Audit Policy. EPA has determined that Respondent has satisfied all of the conditions  
10 required in the Audit Policy and thus qualifies for a 100% penalty reduction from the proposed  
11 gravity-based penalty. Hence, the gravity-based civil penalty is reduced to ZERO DOLLARS  
12 (\$0).

13 E. RESPONDENT'S ADMISSIONS

14 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
15 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
16 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;  
17 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil  
18 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the  
19 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order  
20 contained in this CAFO.

21 F. CIVIL ADMINISTRATIVE PENALTY

22 21. In settlement of the violations specifically alleged in Section I.C of this CAFO,  
23 Respondent shall pay a civil administrative penalty of EIGHTEEN THOUSAND, EIGHT  
24 HUNDRED, AND NINETY-NINE DOLLARS (\$18,899). Respondent shall pay this civil  
25 penalty within thirty (30) days of the effective date of this CAFO, shall make this payment by  
26 cashier's or certified check payable to the "Treasurer, United States of America," and shall send  
27 the check to the following address:  
28

1 U.S. Environmental Protection Agency  
2 Fines and Penalties  
3 Cincinnati Finance Center  
4 P.O. Box 979077  
5 St. Louis, MO 63197-9000

6 Respondent shall accompany its payment with a transmittal letter identifying the case name, the  
7 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,  
8 Respondent shall send a copy of the check and transmittal letter to the following addresses:

9 Regional Hearing Clerk  
10 Office of Regional Counsel (ORC-1)  
11 U.S. Environmental Protection Agency, Region IX  
12 75 Hawthorne Street  
13 San Francisco, CA 94105

14 Matt Salazar  
15 Air Division (AIR-5)  
16 U.S. Environmental Protection Agency, Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105

19 Edgar P. Coral  
20 Office of Regional Counsel (ORC-2)  
21 U.S. Environmental Protection Agency, Region IX  
22 75 Hawthorne Street  
23 San Francisco, CA 94105

24 22. Respondent shall not use payment of any penalty under this CAFO as a tax  
25 deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other  
26 person to use such payment as a tax deduction.

27 23. If Respondent fails to pay the assessed civil administrative penalty of EIGHTEEN  
28 THOUSAND, EIGHT HUNDRED, AND NINETY-NINE DOLLARS (\$18,899), as identified in  
Paragraph 21, by the deadline specified in that Paragraph, then Respondent shall also pay a  
stipulated penalty to EPA. The amount of the stipulated penalty will be EIGHTY-FOUR  
THOUSAND AND SEVEN HUNDRED DOLLARS (\$84,700), and will be immediately due  
and payable on the day following the deadline specified in Paragraph 21, together with the  
initially assessed civil administrative penalty of EIGHTEEN THOUSAND, EIGHT HUNDRED,  
AND NINETY-NINE DOLLARS (\$18,899), resulting in a total penalty due of ONE-HUNDRED  
AND THREE THOUSAND, FIVE HUNDRED, AND NINETY-NINE DOLLARS (\$103,599).

Failure to pay the civil administrative penalty specified in Paragraph 21 by the deadline specified

1 in that Paragraph may also lead to any or all of the following actions:

2 (1) EPA may refer the debt to a credit reporting agency, a collection  
3 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
4 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
5 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
6 collection proceeding.

7 (2) The U.S. Government may collect the debt by administrative offset  
8 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
9 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
10 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
11 C.F.R. §§ 13(C) and 13(H).

12 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
13 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
14 business with EPA or engaging in programs EPA sponsors or funds.

15 (4) Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3701 *et seq.*, and 40  
16 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges,  
17 enforcement expenses, and nonpayment penalties against the outstanding amount that  
18 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty  
19 specified in Paragraph 21 by the deadline specified in that Paragraph.

20 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §  
21 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
22 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
23 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
24 (30) days of the effective date of this CAFO.

25 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
26 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
27 based on either actual or average cost incurred (including both direct and indirect costs), for  
28 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

1 (c) Enforcement Expenses and Nonpayment Penalties.

2 Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount  
3 of the assessed penalty, interest, and handling charges, Respondent shall be liable for the U.S.  
4 Government's enforcement expenses, including, but not limited to, attorneys' fees and costs  
5 incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for  
6 each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten  
7 percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and  
8 nonpayment penalties accrued from the beginning of such quarter. In addition, pursuant to 31  
9 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six  
10 percent (6%) annually, may be assessed on all debts more than ninety (90) days delinquent.

11 G. ENFORCEMENT RESPONSE

12 24. This CAFO constitutes an "enforcement response" as that term is used in EPA's  
13 Clean Air Act Stationary Source Civil Penalty Policy for the purposes of determining  
14 Respondent's "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. §  
15 7413(e).

16 H. RETENTION OF RIGHTS

17 25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
18 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
19 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
20 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
21 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
22 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
23 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
24 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

25 26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
26 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
27 and permits.  
28

1 I. ATTORNEYS' FEES AND COSTS

2 27. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
3 this proceeding.

4 J. EFFECTIVE DATE

5 28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
6 effective on the date that the Final Order contained in this CAFO, having been approved and  
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

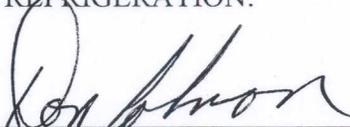
8 K. BINDING EFFECT

9 29. The undersigned representative of Complainant and the undersigned  
10 representative of Respondent each certifies that he or she is fully authorized to enter into the  
11 terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

12 30. The provisions of this CAFO shall apply to and be binding upon Respondent and  
13 its officers, directors, employees, agents, trustees, servants, authorized representatives,  
14 successors, and assigns.

15  
16 FOR RESPONDENT TYLER REFRIGERATION:

17  
18 3/25/08  
DATE

19   
DON JOHNSON  
General Manager  
Tyler Refrigeration, Branches  
221 South Berry Street  
Brea, CA 92821

20  
21  
22  
23 FOR COMPLAINANT EPA:

24  
25 8/4/08  
DATE

26   
DEBORAH JORDAN  
Director, Air Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Tyler Refrigeration, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2008 ~~00 31~~) be  
4 entered, and Respondent shall pay a civil administrative penalty in the amount of EIGHTEEN  
5 THOUSAND, EIGHT HUNDRED, AND NINETY-NINE DOLLARS (\$18,899), and comply  
6 with the terms and conditions set forth in the Consent Agreement.

7  
8  
9 08/07/08  
10 DATE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand-delivered to:

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne St  
San Francisco, California 94105-3901

And that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following party:

Don Johnson  
General Manager  
Tyler Refrigeration  
221 South Berry Street  
Brea, CA 92821  
Certified Return Receipt No. 7007 1490 0000 4710 1560

Dated: Aug. 8, 2008

By: Danielle E. Carr  
Danielle Carr  
Regional Hearing Clerk  
United States Environmental  
Protection Agency  
Region IX  
San Francisco, CA 94105