



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 31 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Jopek, Facility Environmental Contact
Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc.
2900 West Oklahoma Avenue
P.O. Box 2901
Milwaukee, Wisconsin 53201

Dear Mr. Jopek

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc. (St. Luke's), case docket number CAA-05-2012-0009. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JAN 31 2012.

Pursuant to paragraph 21 of the CAFO, St. Luke's must pay the civil penalty within 30 days of JAN 31 2012. Your electronic funds transfer must display the case name Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc., the docket number, CAA-05-2012-0009, and the billing document number, 2751203A010.

Please direct any questions regarding this case to Mary McAuliffe at (312) 886-6237.

Sincerely,

Sara Breneman
Section Chief, MI/WI

Enclosure

cc: Marcy Toney, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Mary McAuliffe/C-14J
Bill Baumann/Wisconsin Department of Natural Resources
Dan Schramm/Wisconsin Department of Natural Resources
Linda Benfield/Foley & Lardner LLP

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY JAN 31 2012
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. CAA-05-2012-0009
)	
Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc.)	Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
Milwaukee, Wisconsin)	
)	
Respondent.)	
_____)	

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 Act), 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 and Radiation Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc. (St. Luke's), a corporation doing business in Wisconsin.

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. Under Section 608(a) of the Act, 42 U.S.C. § 7671g(a), the Administrator of EPA promulgated regulations establishing standards and requirements regarding the use of class I and class I substances during the service, repair, or disposal of appliances and industrial process refrigeration at 40 C.F.R. Part 82, Subpart F.

10. Part 82, Subpart F applies to any person servicing, maintaining, repairing, or owning “appliances,” as that term is defined at 40 C.F.R. § 82.152.

11. Part 82, Subpart F, at 40 C.F.R. § 82.162(a), requires that all refrigerant recovery or recycling devices be certified.

12. 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 violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

13. St Luke’s owns and operates a hospital facility located in Milwaukee, Wisconsin.

14. St Luke's is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. St. Luke's is subject to requirements at 40 C.F.R. Part 82, Subpart F because the facility owns and operates equipment containing class I and class I substances, as defined by 40 C.F.R. Part 82, Subpart F.

16. The facility owns and operates two SPX ProMax refrigerant recovery devices. One device is model number RG6000 and one is model number RG5410A.

17. EPA requested a copy of the Refrigerant Recovery Device Acquisition Certification Form for each refrigerant recovery device in a Section 114 Information Request dated January 28, 2011.

18. St. Luke's provided a copy of the Refrigerant Recovery Device Acquisition Certification Form in response to the Section 114 Information Request on February 28, 2011. The Refrigerant Recovery Device Acquisition Certification Form was signed by the owner/responsible party on February 8, 2011. St. Luke's had not provided a Refrigerant Recovery Device Acquisition Certification Form prior to that February 8, 2011 signed form.

19. St. Luke's was using two uncertified refrigerant recovery devices, and failed to certify the two refrigerant recovery devices until February 8, 2011.

20. St. Luke's has represented to EPA that it is now implementing the following measures: upgrades to the facility's third party refrigerant management software; creation and use of cross-reference fields in building maintenance and refrigerant management software to verify complete work documentation; semi-annual refresher training for technicians; and use of additional procedures for follow-up verification test on refrigerant system repairs at least 24 hours after the repair occurs.

Civil Penalty

21. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$3,425.

22. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,425 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Aurora St. Luke’s Medical Center of Aurora Health Care Metro, Inc., the docket number of this CAFO, and the billing document number.

23. Respondent must send a notice of payment that states Aurora St. Luke’s Medical Center of Aurora Health Care Metro, Inc., the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch, and to Mary McAuliffe 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

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

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

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

26. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

General Provisions

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

28. The effect of the settlement described in paragraph 27, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 20 of this CAFO, and Respondent's letters dated August 24, 2011, October 18, 2011 and October 20, 2011.

29. 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.

30. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 27, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

32. 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 Act, 42 U.S.C. § 7413(e).

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

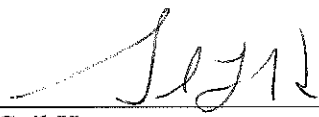
34. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**Aurora St. Luke's Medical Center of Aurora
Health Care Metro, Inc.,
Respondent**

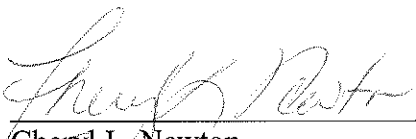
1/12/12
Date


Gail Hanson
Treasurer

*mr
1/12/12*

**United States Environmental Protection Agency,
Complainant**

1/29/12
Date


Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

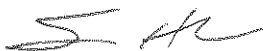
Consent Agreement and Final Order

**In the Matter of: Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc.
Docket No. CAA-05-2012-0009**

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.

1-25-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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JAN 31 2012

Consent Agreement and Final Order

In the Matter of: Aurora St. Luke's Medical Center of Aurora Health Care Metro, Inc.

Docket No.

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0009 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Michael Lappin
Vice President & General Counsel
Aurora Health Care
750 W. Virginia Street
Milwaukee, Wisconsin 53215

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

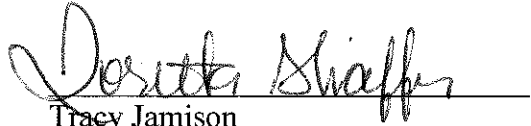
I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Bill Baumann
Acting Bureau Chief, Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53702

Dan Schramm
Supervisor
Wisconsin Department of Natural Resources
2300 North Dr. Martin Luther King Jr. Drive
Milwaukee, Wisconsin 53212

Linda Benfield
Foley & Lardner LL
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

On the 31 day of January 2011.



Tracy Jamison
Office Automation Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7673 9139