



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 28 2020

REPLY TO THE ATTENTION OF

VIA E-MAIL

Gene Brewer
Thermofluid Technologies, Inc.
3031 Topside Business Park Drive
Louisville, Tennessee 37777
Email: gpeters@HowardandHoward.com

Dear Mr. Brewer:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Thermofluid Technologies, Inc. (Thermofluid), docket no. CAA-05-2020-0008. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on February 28, 2020.

Pursuant to paragraph 71 of the CAFO, Thermofluid must pay the first installment of the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, at 312-886-6844 or Gross.Louise@epa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Natalie Topinka".

Natalie Topinka, Acting Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Louise Gross via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2020-0008
)
Thermofluid Technologies, Inc.) Proceeding to Assess a Civil Penalty
Louisville, Tennessee,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
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 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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Thermofluid Technologies, Inc. (Thermofluid), a corporation doing business in Tennessee.
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. Section 612 of the CAA, 42 U.S.C. § 7671k, authorizes EPA to identify, review and restrict the use of substitutes for “Class I” and “Class II” ozone-depleting substances (ODS).

10. Under Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), Congress identified “CFC-12” as a “Class I” ODS.

11. Under Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), Congress identified “HCFC-22” as a “Class II” ODS.

12. Section 612(a) of the CAA, 42 U.S.C. § 7671k(a), requires that, to the maximum extent practicable, Class I and Class II ODS be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

13. Under Section 612(c) of the CAA, 42 U.S.C. § 7671k(c), EPA promulgated the SNAP program regulations at 40 C.F.R. Part 82, Subpart G. These regulations establish standards and requirements for the use of Class I and Class II substances used in specific major industrial sectors where a substitute is used to replace an ODS including, among other things, refrigeration and air conditioning. See 59 Fed. Reg. 13044 (March 18, 1994).

14. Among the purposes of the SNAP regulations is to provide for safe alternatives to ODS. 40 C.F.R. § 82.170(a).

15. Among the objectives of the SNAP program is to identify substitutes for ODS that present lower overall risks to human health and the environment relative to Class I and Class II substances being replaced. 40 C.F.R. § 82.170(b).

16. Under the SNAP regulations at 40 C.F.R. § 82.176(a), any producer of a new substitute must submit a notice of intent to introduce a new substitute into interstate commerce 90 days prior to such introduction.

17. Under the SNAP regulations at 40 C.F.R. § 82.174(a), no person may introduce a new substance into interstate commerce before the expiration of 90 days after a notice is initially submitted to EPA under 40 C.F.R. § 82.176(a).

18. Under the SNAP regulations at 40 C.F.R. § 82.174(b), no person may use a substitute which a person knows or has reason to know was manufactured, processed or imported in violation of the SNAP regulations.

19. Under the SNAP regulations at 40 C.F.R. § 82.172, “substitute or alternative” is defined as “any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II compound.”

20. Under the SNAP regulations at 40 C.F.R. § 82.172, “use” is defined as “any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses.”

21. Under the SNAP regulations at 40 C.F.R. § 82.172, “person” is defined to include a corporation.

22. EPA has promulgated lists of refrigerants acceptable as substitutes for Class I or Class II ODS refrigerants, including some hydrocarbon refrigerants in specific uses. These lists

are codified in the Appendices to 40 C.F.R. Part 82, Subpart G. See 59 Fed. Reg. 13044 (March 18, 1994).

23. Appendix B to 40 C.F.R. Part 82, Subpart G, specifies that flammable substitutes, other than R-152a or R-1234yf in new equipment, are unacceptable for use in CFC-12 motor vehicle air conditioners, for both new and retrofit uses. See 60 Fed. Reg. 31103 (June 13, 1995) and amendments.

24. Appendix R and Appendix V to 40 C.F.R. Part 82, Subpart G, do not include any flammable hydrocarbon refrigerants acceptable for use as a retrofit refrigerant in equipment designed for nonflammable materials. See 80 Fed. Reg. 19491 (April 10, 2015) and 81 Fed. Reg. 86889-91 (December 1, 2016). The only end-use in which flammable hydrocarbon refrigerants are acceptable for retrofit use is in industrial process refrigeration. See 59 Fed. Reg. 13044 (March 18, 1994).

25. Appendix V to 40 C.F.R. Part 82, Subpart G, specifies that all refrigerants identified as flammability Class 3 in ANSI/ASHRAE Standard 34-2013, and all refrigerants meeting the criteria for flammability Class 3 in ANSI/ASHRAE Standard 34-2013, including but not limited to RED TEK 22a, are unacceptable for use in residential and light commercial air conditioning – unitary split A/C systems and heat pumps when used as retrofits. This is because they present a flammability risk when used in equipment designed for nonflammable refrigerants. See 81 Fed. Reg. 86893 (December 1, 2016).

26. 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 after January 12, 2009 through December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015

and \$45,268 per day of violation up to a total of \$362,141 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

27. 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.

28. 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

29. CFC-12 is a non-flammable, Class I ODS used in many end-uses in the refrigeration and air conditioning sector (e.g., industrial process refrigeration, vending machines, household refrigerators and freezers, residential dehumidifiers). See 59 Fed. Reg. 13044 (March 18, 1994), 59 Fed. Reg. 44240 (August 26, 1994), and 60 Fed. Reg. 3318 (January 13, 1995).

30. HCFC-22 is a non-flammable, Class II ODS approved by EPA for many end-uses in the refrigeration and air conditioning sector (e.g., industrial process refrigeration, vending machines, household refrigerators and freezers, residential dehumidifiers). See 59 Fed. Reg. 13044 (March 18, 1994), 59 Fed. Reg. 44240 (August 26, 1994), and 60 Fed. Reg. 3318 (January 13, 1995).

31. CFC-115 is a non-flammable, Class I ODS used in non-mechanical heat transfer. See 60 Fed. Reg. 38729 (July 28, 1995).

32. R-502 is a non-flammable blend of Class I and Class II ODS and is used in many refrigeration and air conditioning applications, such as industrial process refrigeration, ice skating rinks, cold storage warehouses, refrigerated transport, retail food refrigeration, vending machines, water coolers, commercial ice machines, household refrigerators and freezers, and non-mechanical heat transfer. See 59 Fed. Reg. 13044 (March 18, 1994).

33. CFC-12 is commonly referred to as "R-12."

34. HCFC-22 is commonly referred to as "R-22."

35. CFC-115 is commonly referred to as "R-115."

36. R-502 is a blend of R-22 and R-115.

37. Thermofluid owns and operates a hydrocarbon refrigerant processing facility at 3031 Topside Business Park Dr., Louisville, Tennessee (the Facility).

38. At the facility, Thermofluid has packaged, labeled, sold and distributed hydrocarbon refrigerants under the registered trademark "Red Tek®."

39. Thermofluid is a "person" under the SNAP regulations and is subject to the SNAP regulations at 40 C.F.R. Part 82, Subpart G.

40. Thermofluid has sold and distributed flammable hydrocarbon refrigerants into interstate commerce called "Red Tek 12a," "Red Tek 22a" and "Red Tek 502a" that are "designed as a direct replacement and retrofit option for refrigerants in automotive, commercial, and home air conditioning systems."

41. The Safety Data Sheets for "Red Tek 12a" state that it is an "extremely flammable gas" that presents "risk of explosion" and "vapor may ignite if exposed to static discharge."

42. The Safety Data Sheets for “Red Tek 22a” state that it is an “extremely flammable gas” that presents “risk of explosion” and may react “with oxidants causing fire/explosion hazard.”

43. The Safety Data Sheets for “Red Tek 502a” state that it is an “extremely flammable gas” that “may cause flash fire” and “accidental releases pose a serious fire or explosion hazard.”

44. The product labels for “Red Tek 12a” state that the “contents may catch fire.”

45. The product labels for “Red Tek 22a” state that the “contents may catch fire.”

46. The product labels for “Red Tek 502a” state that it “can form explosive mixtures with air.”

47. Technical materials prepared by Thermofluid related to the use of Red Tek® hydrocarbon refrigerants directly compare Red Tek® hydrocarbon refrigerant data to refrigerant data of R-12, R-22 and R-502.

48. Marketing materials for Red Tek® hydrocarbon refrigerants state that they are “designed as a direct replacement and retrofit option for refrigerants in automotive, commercial, and home air conditioning systems.”

49. Marketing materials for “Red Tek 12a” state that it “can be used effectively in R12 or R134a refrigeration systems without major ‘retrofitting.’”

50. Marketing materials for “Red Tek 22a” state that it is “designed as a direct replacement for R-22.”

51. Marketing materials for “Red Tek 502a” state that it is “designed as a direct replacement for R-502.”

52. At the Facility, Thermofluid prepares “Red Tek 12a”, “Red Tek 22a”, and “Red Tek 502a” for sale by, among other actions, labeling canisters of “Red Tek 12a”, “Red Tek 22a”, and “Red Tek 502a,” respectively.

53. The product labels for “Red Tek 12a” detail mass equivalencies between “Red Tek 12a” and R-12.

54. The product label for “Red Tek 22a” detail mass equivalencies between “Red Tek 22a” and R-22.

55. The product label for “Red Tek 502a” detail mass equivalencies between “Red Tek 502a” and R-502.

56. “Red Tek 12a,” “Red Tek 22a” and “Red Tek 502a” are products intended for use as replacements for Class I compounds, Class II compounds, or both, and thus “substitute[s],” as defined by the SNAP regulations at 40 C.F.R. § 82.172.

57. The Class I substance that “Red Tek 12a” is intended to replace, R-12, is still available for use as a refrigerant and is used throughout the industry.

58. The Class II substance that “Red Tek 22a” is intended to replace, R-22, is still available for use as a refrigerant and is used throughout the industry.

59. The Class I substance that “Red Tek 502a” is intended to replace, R-502, is still available for use as a refrigerant and is used throughout the industry.

60. No notice of intent to introduce “Red Tek 12a,” “Red Tek 22a” or “Red Tek 502a” into interstate commerce has been submitted to EPA.

61. EPA has not approved “Red Tek 12a” as a substitute for R-12. EPA has not approved “Red Tek 22a” as a substitute for R-22. EPA has not approved “Red Tek 502a” as a substitute for R-502.

62. Thermofluid introduced “Red Tek 12a,” “Red Tek 22a” and “Red Tek 502a” into interstate commerce before the expiration of 90 days after initial submission to EPA of the notice of intent, in violation of 40 C.F.R. § 82.174(a).

63. By preparing “Red Tek 12a,” “Red Tek 22a,” and “Red Tek 502a” for sale by labeling them, among other actions, Thermofluid used substitutes which it knows or has reason to know were manufactured, processed or imported in violation of the SNAP regulations at 40 C.F.R. § 82.174(b).

64. Because EPA has not received a notice of intent to introduce “Red Tek 12a” into interstate commerce, Thermofluid introduced “Red Tek 12a” into interstate commerce before the expiration of 90 days after initial submission to EPA of the notice of intent, in violation of 40 C.F.R. § 82.174(a).

65. Because EPA has not received a notice of intent to introduce “Red Tek 22a” into interstate commerce, Thermofluid introduced “Red Tek 22a” into interstate commerce before the expiration of 90 days after initial submission to EPA of the notice of intent, in violation of 40 C.F.R. § 82.174(a).

66. Because EPA has not received a notice of intent to introduce “Red Tek 502a” into interstate commerce, Thermofluid introduced “Red Tek 502a” into interstate commerce before the expiration of 90 days after initial submission to EPA of the notice of intent, in violation of 40 C.F.R. § 82.174(a).

67. By selling and distributing “Red Tek 12a,” Thermofluid used a substitute which it knows or has reason to know was manufactured, processed or imported in violation of the SNAP regulations, in violation of 40 C.F.R. § 82.174(b).

68. By selling and distributing “Red Tek 22a,” Thermofluid used a substitute which it knows or has reason to know was manufactured, processed or imported in violation of the SNAP regulations, in violation of 40 C.F.R. § 82.174(b).

69. By selling and distributing “Red Tek 502a,” Thermofluid used a substitute which it knows or has reason to know was manufactured, processed or imported in violation of the SNAP regulations, in violation of 40 C.F.R. § 82.174(b).

Civil Penalty

70. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$78,000.

71. Respondent must pay the \$78,000 civil penalty in two installments with interest as follows: \$50,000 within 30 days of the effective date of this CAFO and \$28,186.67 within 270 days of the effective date of this CAFO. Respondent must pay the installments 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

The check must note Respondent’s name and the docket number of this CAFO.

72. 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 (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard

Chicago, Illinois 60604

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

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

74. If Respondent does not pay timely any installment payment as set forth in paragraph 71, above, the entire unpaid balance of the civil penalty and any amount required by paragraph 75, below, shall become due and owing upon written notice by EPA to Respondent of the delinquency. 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.

75. 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 attorney's 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

76. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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 e-mail addresses: gross.louise@epa.gov (for Complainant), and gpeters@HowardandHoward.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

78. 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.

79. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

80. Respondent certifies that it is complying fully with Section 612 of the CAA.

81. 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).

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


83. 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.

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

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

Thermofluid Technologies Inc., Respondent

12/29/19
Date


Gene Brewer, CEO
Thermofluid Technologies, Inc.

United States Environmental Protection Agency, Complainant

2/21/2020
Date

Michael D. Harris
Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Thermofluid Technologies, Inc.
Docket No. CAA-05-2020-0008

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.

2/28/2020

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Thermofluid Technologies, Inc.
Docket Number: CAA-05-2020-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 2020 0008, which was filed on February 28, 2020, in the following manner to the following addressees:

Copy by E-mail to Louise Gross
Attorney for Complainant: Gross.Louise@epa.gov

Copy by E-mail to Gary Peters
Attorney for Respondent: gpeters@HowardandHoward.com

Copy by E-mail to Ann Coyle
Regional Judicial Officer: coyle.ann@epa.gov

Dated: February 28, 2020



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5