

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 DEC -4 PM 3:10
REGIONAL HEARING
CLERK

In the Matter of)
)
Medford Auto Wreckers) Motion to Withdraw Complaint
) Without Prejudice
) CAA-02-2008-1209
Respondent)

On June 27, 2008, in accordance with 40 C.F.R. Part 22, pursuant to 42 U.S.C. § 7413(d), Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act), the United States Environmental Protection Agency (EPA) filed with the Regional Hearing Clerk and served on Medford Auto Wreckers, Inc. (Respondent), a Complaint and Notice of Opportunity to Request a Hearing (Complaint). Complainant, the Director of the Division of Enforcement and Compliance Assistance, herein moves the Court to grant this Motion to withdraw this Complaint without prejudice.

The Complaint alleged three (3) violations of 40 C.F.R. Part 82, Subpart F, 40 C.F.R. § 82.150 et seq., promulgated pursuant to Section 608 of the Act. On August 19, 2008, Respondent submitted its Answer to the Complaint. On September 22, 2008, Chief Administrative Law, Judge Susan L. Biro, issued an "Order Initiating Alternative Dispute Resolution Process and Appointing Neutral," designating Judge Spencer T. Nissen as the neutral.

The first allegation in the Complaint was based on a video of a program aired on the 'Dirty Jobs' television show. The video showed a Medford Auto Wreckers' technician in what appeared to be illegal venting of an auto air conditioner by cutting a line. In an affidavit included with its Answer to the Complaint, Respondent attested that the CFC refrigerant that had been in the air conditioner had been reclaimed correctly prior to the show and that the air conditioner was then refilled with water under pressure, so that when the line was cut for the show there would appear to be a much more dramatic release for the audience.

The second allegation claimed that Respondent did not properly collect and recycle refrigerant from any of the several cars it routinely disassembled. Affidavits from two of its contractors, submitted with its Answer to the Complaint, explained that each contractor routinely completed the evacuation and reclamation of refrigerant for Respondent.

The third allegation involved Medford's failure to keep records of the amount of refrigerant reclaimed. The contractor's affidavits, submitted with its Answer to the Complaint, provided information that each had retained records of reclaimed refrigerant from Respondent's cars.

Based on the contentions in the Affidavits submitted with Respondent's Answer to the Complaint, and pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.14(d) and 22.16(a), the Complainant respectfully moves the Court to grant this Motion without prejudice.

Provided this Motion for Withdrawal is granted, Complainant formally requests that Judge Nissen be notified to insure that alternative dispute resolution not be initiated.

NOVEMBER 21, 2008

Date


Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance

CERTIFICATE OF SERVICE

I certify that the foregoing **Motion**, dated December 2, 2008, was sent this day in the following manner to the addressees listed below.

Original and One Copy By Hand Delivered to:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy By Mail to:

Lawrence J. Holt, Esq.
Attorney at Law
910 Middle Country Road, Suite 1
Selden, New York 11784-2553

Copy By Pouch to:

The Honorable Susan L. Biro
Administrative Law Judge
Office of Administrative Law Judges
U.S. EPA
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460

Dated: December 2, 2008



Orelia Lewis
Branch Secretary