

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0029
)	
Garden St. Iron & Metal, Inc.)	Proceeding to Assess a Civil Penalty
Cincinnati, Ohio)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d).
Respondent.)	
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Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1)(B), for violations of Section 608 of the CAA, 42 U.S.C. § 7671g.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.

3. The Respondent is Garden Street Iron & Metal, Inc., a corporation doing business in the State of Ohio.

4. Respondent is hereby notified that Complainant alleges that Respondent violated the provisions identified herein and seeks the assessment of a civil penalty pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. *See* 40 C.F.R. § 22.1(a)(2).

5. This Complaint provides Respondent notice of its opportunity to request a hearing. *See* 40 C.F.R. § 22.15(c).

Statutory and Regulatory Background

6. Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), directs EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of ozone-depleting substances (ODSs) during the service, repair, or disposal of appliances and industrial process refrigeration.

7. The CAA categorizes ODSs into class I and class II substances. *See* 42 U.S.C. § 7671a.

8. The term “class I” refers to an ODS that is listed in 40 C.F.R. Part 82, Subpart A, Appendix A. 40 C.F.R. § 82.152; *see also* 42 U.S.C. § 7671(3).

9. Class I substances include a type of ODSs called chlorofluorocarbons (CFCs). 42 U.S.C. §§ 7671a(a); 7671(3).

10. R-12, the CFC Dichlorodifluoromethane (also referred to as “CFC-12”) is a class I substance listed in 40 C.F.R. Part 82, Subpart A, Appendix A. *See* 40 C.F.R. § 82.152; *see also* 42 U.S.C. § 7671(3).

11. R-12 is refrigerant commonly found in motor vehicle air conditioners (MVACs) and small appliances, including but not limited to vending machines, dehumidifiers, freezers, refrigerators, and water coolers. *See* 40 C.F.R. Part 82, Subpart G, Appendix A (includes a non-exhaustive list of end uses for CFC-12); *see also* Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances, 61 Fed. Reg. 25585-01 (May 22, 1996) (describing how CFC-12 is used in MVACs); *see also* Protection of Stratospheric Ozone, 59 Fed. Reg. 13044-01 (March 18, 1994) (recognizing that CFC-12 is used in refrigerated transport, commercial ice machines, water coolers, household refrigerators and freezers, dehumidifiers, and retail food refrigeration among other small appliances).

12. EPA concluded that continued growth in CFCs and halons in the atmosphere will result in substantial ozone-depletion, having serious health and environmental consequences.

Protection of Stratospheric Ozone, EPA, 53 Fed. Reg. 30566-01, 30573 (Aug. 12, 1988).

13. The global warming potential (GWP) is a metric for determining the relative contribution of a substance to climate warming as compared to carbon dioxide. *See* WMO/UN Environment Program Scientific Assessment of Ozone Depletion, at 13 (2022).

14. R-12 has a GWP of 11,200. *See* IPCC AR6 WorkGroup I, Climate Change 2021 The Physical Science Basis, Table 7.SM.7, 7SM-24 (April 2022) (“AR6”).

15. The term “class II” refers to an ODS that is listed in 40 C.F.R. Part 82, Subpart A, Appendix B. 40 C.F.R. § 82.152; *see also* 42 U.S.C. § 7671(4).

16. Class II substances include a type of ODSs called hydrochlorofluorocarbons (HCFCs). 42 U.S.C. §§ 7671a(b); 7671.

17. R-22, the HCFC Monochlorodifluoromethane (also referred to as “HCFC-22”) is a class II substance listed in 40 C.F.R. Part 82, Subpart A, Appendix B. *See* 40 C.F.R. § 82.152; *see also* 42 U.S.C. § 7671(4).

18. R-22 is a refrigerant commonly found in small appliances, including but not limited to transport refrigeration, vending machines, retail food refrigeration, household refrigeration, and window air conditioner units. *See* 40 C.F.R. Part 82, Subpart G, Appendix G (includes a non-exhaustive list of end uses for HCFC-22); *see also* 59 Fed. Reg. 13044-01 (describing how HCFC-22 is used in residential air conditioning, refrigerated transport, retail food refrigeration, commercial ice machines, water coolers, household refrigerators and freezers, dehumidifiers, refrigeration appliances, and chillers); Protection of Stratospheric Ozone: Notice for Significant New Alternatives Policy Program, 71 Fed. Reg. 56884-01 (Sept.

28, 2006) (recognizing that HCFC-22 is used in household refrigerators and freezers among other small appliances).

19. In 2007, “the most common refrigerant, R-22, [was assigned] a 100-year global warming potential of 1,810, almost 2,000 times the potency of carbon dioxide, so only one pound of R-22 is nearly as potent as a ton of carbon dioxide. To compare with driving a car, this means that only one 30-lb tank of R-22 is more potent if released, than the CO₂ emitted into the atmosphere by driving nearly seven additional cars each year (source data available at CARB's CoolCalifornia Calculator).” California Air Resources Board, available at <https://ww2.arb.ca.gov/resources/documents/high-gwp-refrigerants>; *see also* IPCC AR4 WorkGroup I, Climate Change 2007 The Physical Science Basis (2007).

20. Currently, R-22 is assigned a GWP of 1,960. *See* AR6 at Table 7.SM.7, 7SM-24.

21. Section 608 of the CAA, 42 U.S.C. § 7671g, provides, among other things, that CAA regulations shall require that class I or class II substances contained in bulk in appliances, machines, or other goods shall be removed from each such appliance, machine, or other good prior to the disposal of such items or their delivery for recycling.

22. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to any person maintaining, servicing, repairing, or disposing of appliances (including small appliances and motor vehicle air conditioners) containing class I, class II or non-exempt substitute refrigerants, among other persons. *See* 40 C.F.R. § 82.150(b).

23. The term “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ODS. Examples include, but are not limited

to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. *See* 40 C.F.R. § 82.152.

24. For purposes of this Complaint, the term “substitutes” does not include “exempt substitutes” which refers to certain substitutes when used in certain end-uses that are specified in 40 C.F.R. § 82.154(a)(1) as exempt from the venting prohibition and the requirements of 40 C.F.R. Part 82, Subpart F. *See* 40 C.F.R. § 82.152.

25. For purposes of this Complaint, the term “substitutes” includes “non-exempt substitutes,” which refers to all other substitutes and end-uses not so specified in 40 C.F.R. § 82.154(a)(1). *See* 40 C.F.R. § 82.152.

26. Non-exempt substitutes for class I and II substances include, *inter alia*, a type of substitutes known as Hydrofluorocarbons (HFCs). *See* 40 C.F.R. § 82.154(a)(1).

27. Non-exempt substitutes include R-134a, the HFC 1,1,1,2-Tetrafluoroethane.

28. R-134a is commonly found in MVACs and small appliances. *See* 40 C.F.R. Part 82, Subpart G, Appendix B (includes a non-exhaustive list of end uses for HFC-134a); *see also* Protection of Stratospheric Ozone, 59 Fed. Reg. 13044-01 (March 18, 1994) (recognizing that HFC-134a is used in MVACs, refrigerated transport, dehumidifiers, retail food refrigeration, water coolers, and commercial ice machines among other uses).

29. As of 2020, R-134a had a GWP of 1,530 and is prohibited from being directly released to the atmosphere. *See* Handbook for the Montreal Protocol on Substances that Deplete the Ozone Layer 14th ed., UN Environment Programme (2020) Section 1.1. Annex F: Controlled substances p. 35 and AR6 at 7SM-26.

30. Pursuant to 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release any refrigerant into the

environment from such appliances, with certain exceptions not relevant to this matter. *See also* 42 U.S.C. § 7671g(c).

31. Pursuant to 40 C.F.R. § 82.154(b)(1) no person shall maintain, service, repair, or dispose of an appliance containing a class I or class II refrigerant or a non-exempt substitute refrigerant without observing the specific, applicable practices established in 40 C.F.R. § 82.155, among other requirements.

32. The term “person” means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof. 40 C.F.R. § 82.152.

33. The term “appliance” means any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner, refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance. 40 C.F.R. § 82.152; *see also* 42 U.S.C. § 7671(1).

34. The term “refrigerant” means any substance, including blends and mixtures, consisting in part or whole of a class I or class II ODS or substitute that is used for heat transfer purposes and provides a cooling effect. 40 C.F.R. § 82.152.

35. The term “small appliance” means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat

pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers. 40 C.F.R. § 82.152.

36. The term “motor vehicle air conditioner (MVAC)” means an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d). *See* 40 C.F.R. § 82.152.

37. Pursuant to 40 C.F.R. § 82.32(d), MVAC means mechanical vapor compression refrigeration equipment used to cool the driver’s or passenger’s compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.

38. The term “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap. 40 C.F.R. § 82.152.

39. Pursuant to 40 C.F.R. § 82.155(a), persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must evacuate refrigerant to the levels specified in the law at 40 C.F.R. § 82.156(b) through (d).

40. Pursuant to 40 C.F.R. § 82.155(a), persons recovering refrigerant from a small appliance, MVAC, or MVAC-like appliance for purposes of disposal of these appliances must use recovery equipment that meets the standards specified in the law at 40 C.F.R. § 82.158(e) through (g), or 40 C.F.R. § 82.30-42, as applicable.

41. Pursuant to 40 C.F.R. § 82.155(b), the final processor must either: (1) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or (2) verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

42. If using a signed statement under 40 C.F.R. § 82.155(b)(2), the signed statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered.

43. If using a signed contract between the supplier and the final processor under 40 C.F.R. § 82.155(b)(2), the signed contract must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

44. Pursuant to 40 C.F.R. § 82.155(b), the final processor is the person who takes the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance.

45. Pursuant to 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the final processor. The form of this notification may be signs, letters to suppliers, or other equivalent means.

46. Pursuant to 40 C.F.R. § 82.155(c), the final processor of a small appliance, MVAC, or MVAC-like appliance must keep a copy of all the signed statements or contracts

obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy, or in electronic format, for three years.

47. Whenever, on the basis of any information available to the EPA Administrator, the EPA Administrator finds that any person has violated, or is in violation of, any requirement or prohibition of subchapter VI of chapter 85 of title 42 of the United States Code, 42 U.S.C. § 7671g, Stratospheric Ozone Protection, the Administrator may issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit; issue an administrative penalty order in accordance with 42 U.S.C § 7413(d); or bring a civil action in accordance with 42 U.S.C § 7413(b).

48. Pursuant to 42 U.S.C § 7413(d), the EPA Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any other requirement or prohibition of subchapter VI of chapter 85 of title 42 of the United States Code; 42 U.S.C. § 7671g.

49. On January 6, 2023, EPA published a final Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. § 19.4, thereby updating the statutory per day of violation civil penalty amount under 42 U.S.C § 7413(d)(1) to \$55,808 to account for inflation with a statutory maximum of \$446,456 adjusted for inflation.

50. The Administrator may assess a penalty greater than \$446,456 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

51. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$446,456 is appropriate for this administrative penalty action.

52. Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1), limits the EPA 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.

53. 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 Complaint.

54. The Consolidated Rules of Practice under 40 C.F.R. § 22.1(a)(1) govern all administrative adjudicatory proceedings for the assessment of any administrative civil penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. 7413(d).

Factual Allegations

55. At all times relevant to this Complaint, Respondent owned and operated a scrap recycling facility located at 2885 Spring Grove Avenue, Cincinnati, Ohio 45225 ("Facility").

56. At all times relevant to this Complaint, at their Facility, Respondent has accepted small appliances that contain or once contained ODSs or substitutes including but not limited to R-12, R-22, and R-134a.

57. At all times relevant to this Complaint, at their Facility, Respondent has accepted MVACs that contain or once contained ODSs or substitutes including but not limited to R-12 and R-134a.

58. On or about March 20, 2019, inspectors employed by EPA conducted an inspection at the Facility.

59. During the March 20, 2019 inspection, a hammermill metal shredder was present at the Facility.

60. During the March 20, 2019 inspection, at least four small appliances, including two freezers and two refrigerators were present in the yard at the Facility.

61. The small appliances cited in Paragraph 60 contained or once contained R-12, R-22, or R-134a.

62. The small appliances cited in Paragraph 60 were positioned for scrap recycling at the Facility.

63. During the March 20, 2019 inspection, a freezer with an R-12 label was positioned for scrap recycling at the Facility.

64. As of March 20, 2019, Respondent accepted multiple small appliances daily at the Facility.

65. From August 1, 2016 through October 1, 2019, Respondent accepted tens of thousands of “small items with compressors.”

66. During the March 20, 2019 inspection, at least nine MVACs were positioned for scrap recycling at the Facility.

67. During the March 20, 2019 inspection, at least one of the MVACs positioned for scrap recycling at the Facility had cut refrigerant lines.

68. From October 1, 2018 through March 24, 2019, Respondent accepted at least 1,218 vehicles manufactured after 1995 for final disposal at their Facility.

69. The 1,218 vehicles referenced in Paragraph 68 were of the make, model, and year such that they contained MVACs.

70. MVACs manufactured for vehicles after 1995 consist of R-12 or R-134a as industry standard.

71. From October 1, 2018 through March 24, 2019, Respondent accepted at least 1,218 MVACs for final disposal at their Facility.

72. The MVACs cited in Paragraph 68 contained or once contained R-12 or R-134a.

73. From October 1, 2018 through March 30, 2019, Respondent has disassembled small appliances for recycling for scrap at their Facility.

74. From October 1, 2018 through March 24, 2019, Respondent has disassembled MVACs for recycling for scrap at their Facility.

75. From October 1, 2018, through March 24, 2019, Respondent did not perform any refrigerant recovery for MVACs in accordance with 40 C.F.R. § 82.155(a) at their Facility.

76. From October 1, 2018 through March 30, 2019, Respondent did not perform any refrigerant recovery for small appliances in accordance with 40 C.F.R. § 82.155(a) at their Facility.

77. Respondent has represented that as of March 25, 2019, Respondent has evacuated refrigerants for MVACs they have accepted for disposal at their Facility.

78. From August 1, 2016 through March 24, 2019, Respondent required each supplier of items for final disposal, including small appliances and MVACs, to sign a scale ticket prior to acceptance of an item.

79. During the March 20, 2019 inspection, Respondent provided a sample copy of the scale ticket referenced in Paragraph 78 to the EPA inspector.

80. The scale ticket states that the supplier certifies that “any material(s) containing CFC has been removed” from the item upon arrival at the Facility.

81. The scale ticket does not address all refrigerants. The scale ticket does not address HCFCs, HFCs, or any other class II ODS, or any non-exempt substitutes for refrigerants.

82. The scale ticket does address recovery of refrigerants.

83. The scale ticket not contain a statement that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

84. The scale ticket does not contain entries for the name and address of a person recovering refrigerant.

85. The scale ticket does not contain an entry for the date that refrigerant was recovered.

86. From August 1, 2016 to October 1, 2019, Respondent did not obtain any signed verification statements, as defined by 40 C.F.R. § 82.155(b)(2), from their suppliers of small appliances or MVACs.

87. Respondent did not retain any signed verification statements, as defined by 40 C.F.R. § 82.155(b)(2), for any acceptance of a small appliance that occurred between January 1, 2018 and March 30, 2019.

88. Respondent did not retain any signed verification statements, as defined by 40 C.F.R. § 82.155(b)(2), for any acceptance of a MVAC that occurred between January 1, 2018 and March 24, 2019.

89. From March 1, 2019 through March 24, 2019, Respondent accepted MVACs for final disposal at their Facility from at least 27 suppliers.

90. During the March 20, 2019 inspection, the Facility did not have any signs posted notifying suppliers of appliances that refrigerant must be recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility.

91. Respondent represents that they installed a sign on November 1, 2019 to provide notification to suppliers of appliances that refrigerant must be recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility.

92. From March 1, 2019 through March 24, 2019, Respondent did not have signs posted at the Facility notifying suppliers of appliances that refrigerant must be recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility.

93. From March 1, 2019 through March 24, 2019, Respondent did not provide letters to suppliers of appliances notifying them that refrigerant must be recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility.

94. On June 6, 2019, EPA issued to Respondent a Finding of Violation (FOV) alleging that it violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at their Facility.

95. On July 17, 2019, representatives of Garden Street and EPA discussed the June 6, 2019 FOV.

General Allegations

96. Respondent is a corporation, incorporated and with a place of business in Ohio, and is therefore a “person,” as that term is defined by 40 C.F.R. § 82.152.

97. At all times relevant to this Complaint, at their Facility, Respondent has accepted for final disposal “small appliances,” as that term is defined by 40 C.F.R. § 82.152.

98. At all times relevant to this Complaint, at their Facility, Respondent has accepted for final disposal “MVACs,” as that term is defined by 40 C.F.R. § 82.152.

99. Respondent is a “final processor,” as that term is defined by 40 C.F.R. § 82.155(b) because they operate a metal shredder to prepare vehicles and appliances, including small appliances or MVACs, as defined in 40 C.F.R. § 82.152, for recycling and final disposal.

100. Respondent is a “final processor” as defined at 40 C.F.R. § 82.155(b) because they are a scrap recycler.

101. Respondent’s disassembly of small appliances for recycling for scrap constitutes “disposal” within the meaning of 40 C.F.R. § 82.152.

102. Respondent’s disassembly of MVACs for recycling for scrap constitutes “disposal” within the meaning of 40 C.F.R. § 82.152.

103. The ODSs or substitutes contained or once contained in the small appliances Respondent has accepted for recycling are refrigerants within the meaning of 40 C.F.R. § 82.152 because they included substances such as R-12, R-22, and R-134a.

104. The ODSs or substitutes contained or once contained in the MVACs Respondent has accepted for recycling are refrigerants within the meaning of 40 C.F.R. § 82.152 because they included substances such as R-12 and R-134a.

105. As a person who disposes of small appliances and MVACs, Respondent is subject to requirements at 40 C.F.R. Part 82, Subpart F.

106. Respondent did not perform onsite refrigerant recovery in accordance with 40 C.F.R. § 82.155(a) for small appliances at their Facility for the period of October 1, 2018 through March 30, 2019.

107. Respondent was unable to provide EPA with any verification statements under 40 C.F.R. § 82.155(b) for small appliances for the period of October 1, 2018 through March 30, 2019.

108. From October 1, 2018 through March 24, 2019, Respondent accepted at least 1,218 MVACs for final disposal at their Facility.

109. Respondent did not perform onsite refrigerant recovery in accordance with 40 C.F.R. § 82.155(a) for MVACs at their Facility for the period of October 1, 2018 through March 24, 2019.

110. Respondent was unable to provide EPA with any verification statements under 40 C.F.R. § 82.155(b) for MVACs for the period of October 1, 2018 through March 24, 2019.

**Counts one through 185: Failure to Obtain and/or Retain Verification Statements
or Contracts for MVACs**

111. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 110 of this Complaint.

112. 40 C.F.R. § 82.155(b) requires the final processor to recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or verify using a signed statement or contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

113. 40 C.F.R. § 82.155(c) requires the final processor to keep a copy of all the signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy or in electronic format, for three years.

114. During the March 20, 2019 inspection, at least nine MVACs, within the meaning of 40 C.F.R. § 82.152, were positioned for scrap recycling at the Facility.

115. From March 1, 2019 through March 24, 2019, Respondent accepted at least 185 MVACs, within the meaning of 40 C.F.R. § 82.152, for final disposal at their Facility, which includes the MVACs referenced in Paragraph 114.

116. Respondent did not perform onsite refrigerant recovery in accordance with 40 C.F.R. § 82.155(a) for MVACs from March 1, 2019 through March 24, 2019.

117. During the March 20, 2019 inspection, EPA requested signed statements verifying that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a), the name and address of the person who recovered the refrigerant, and the date the refrigerant was recovered.

118. Respondent failed to provide the signed statements referenced in Paragraph 117.

119. Respondent, instead, provided a sample copy of their scale ticket, which stated that “any materials containing CFCs has been removed.”

120. Respondent failed to obtain a signed contract containing a statement that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery for any of the MVACs referenced in Paragraph 115.

121. Respondent failed to obtain a signed contract containing a statement that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to receipt by the supplier for any of the 185 MVACs referenced in Paragraph 115.

122. From March 1, 2019 through March 24, 2019, Respondent did not have signed contracts with their suppliers containing a statement that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery of MVACs to the Facility.

123. From March 1, 2019 through March 24, 2019, Respondent did not have signed contracts with their suppliers containing a statement that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to receipt by the supplier.

124. From March 1, 2019 through March 24, 2019, Respondent failed to obtain any signed statements containing a verification that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

125. From March 1, 2019 through March 24, 2019, Respondent did not obtain a signed verification statement under 40 C.F.R. § 82.155(b)(2) for any of the 185 MVACs, referenced in Paragraph 115, they accepted for final disposal at their Facility, in violation of 40 C.F.R. § 82.155(b).

126. From March 1, 2019 through March 24, 2019, Respondent did not recover any remaining refrigerant in accordance with 40 C.F.R. § 82.155(a) from any of the 185 MVACs, referenced in Paragraph 115, they accepted for final disposal at their Facility, in violation of 40 C.F.R. § 82.155(b).

127. Each acceptance by Respondent for final disposal of an MVAC without performing recovery of any remaining refrigerants in accordance with 40 C.F.R. § 82.155(a) and

without obtaining the verification under 40 C.F.R. § 82.155(b)(2) constitutes a separate unlawful act pursuant to 40 C.F.R. § 82.155(b) and 42 U.S.C. § 7671g.

128. Respondent's 185 violations of 40 C.F.R. § 82.155(b) subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty of up to the statutory maximum under 42 U.S.C. § 7413(d)(1)(B).

129. Alternatively, even if Respondent had obtained verification statements for MVACs, Respondent did not keep a copy of any signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site for three years for any of the 185 MVACs in Paragraph 115, in violation of 40 C.F.R. § 82.155(c).

130. Each MVAC for which Respondent failed to retain a copy of a signed statement or contract obtained under 40 C.F.R. § 82.155(b) constitutes a separate unlawful act pursuant to 40 C.F.R. § 82.155(c) and 42 U.S.C. § 7671g.

131. Respondent's 185 violations of 40 C.F.R. § 82.155(c) subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty of up to the statutory maximum under 42 U.S.C. § 7413(d)(1)(B).

**Counts 186 through 189: Failure to Obtain and/or Retain Verification Statements
or Contracts for 4 Small Appliances**

132. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 131 of this Complaint.

133. 40 C.F.R. § 82.155(b) requires the final processor to recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or verify using a signed statement or contract that all refrigerant that had not leaked previously has been

recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

134. 40 C.F.R. § 82.155(c) requires the final processor to keep a copy of all the signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site, in hard copy or in electronic format, for three years.

135. As of March 20, 2019, Respondent accepted multiple small appliances daily for final disposal at their Facility.

136. From August 1, 2016 to October 1, 2019, Respondent accepted tens of thousands of “small items with compressors.”

137. During the March 20, 2019 inspection, at least four small appliances, including two freezers and two refrigerators were present in the yard at the Facility.

138. The small appliances referenced in Paragraph 137, were positioned for scrap recycling at the Facility.

139. Respondent did not perform onsite refrigerant recovery in accordance with 40 C.F.R. § 82.155(a) for small appliances as of March 20, 2019.

140. During the March 20, 2019 inspection, EPA requested any signed statements verifying that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a), the name and address of the person who recovered the refrigerant, and the date the refrigerant was recovered.

141. Respondent failed to provide the signed statements referenced in Paragraph 140.

142. Respondent, instead, provided a sample copy of their scale ticket, which stated that “any materials containing CFCs has been removed.”

143. Respondent failed to obtain a signed contract containing a statement that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery for any of the four small appliances referenced in Paragraph 137.

144. Respondent failed to obtain a signed contract containing a statement that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to receipt by the supplier for any of the four small appliances referenced in Paragraph 137.

145. As of March 20, 2019, Respondent did not have signed contracts with their suppliers containing a statement that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery of small appliances to the Facility.

146. As of March 20, 2019, Respondent did not have signed contracts with their suppliers containing a statement that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to receipt by the supplier.

147. As of March 20, 2019, Respondent failed to obtain any signed statements containing a verification that refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a).

148. On March 20, 2019, Respondent did not obtain a signed verification statement under 40 C.F.R. § 82.155(b)(2) for any of the four small appliances, referenced in Paragraph 137, they accepted for final disposal at their Facility, in violation of 40 C.F.R. § 82.155(b).

149. On March 20, 2019, Respondent did not recover any remaining refrigerant in accordance with 40 C.F.R. § 82.155(a) from any of the four small appliances, referenced in Paragraph 137, they accepted for final disposal at their Facility, in violation of 40 C.F.R. § 82.155(b).

150. Each acceptance by Respondent for final disposal of a small appliance without performing recovery of any remaining refrigerants in accordance with 40 C.F.R. § 82.155(a) and without obtaining the verification under 40 C.F.R. § 82.155(b)(2) constitutes a separate unlawful act pursuant to 40 C.F.R. § 82.155(b) and 42 U.S.C. § 7671g.

151. Respondent's four violations of 40 C.F.R. § 82.155(b) subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty of up to the statutory maximum under 42 U.S.C. § 7413(d)(1)(B).

152. Alternatively, even if Respondent had obtained verification statements for small appliances, Respondent did not keep a copy of any signed statements or contracts obtained under 40 C.F.R. § 82.155(b)(2) on site for three years for any of the four small appliances referenced in Paragraph 137, in violation of 40 C.F.R. § 82.155(c).

153. Each small appliance for which Respondent failed to retain a copy of a signed statement or contract obtained under 40 C.F.R. § 82.155(b) constitutes a separate unlawful act pursuant to 40 C.F.R. § 82.155(c) and 42 U.S.C. § 7671g.

154. Respondent's four violations of 40 C.F.R. § 82.155(c) subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty of up to the statutory maximum under 42 U.S.C. § 7413(d)(1)(B).

Count 190 through 217. Failure to Provide Notification to Suppliers

155. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 154 of this Complaint.

156. 40 C.F.R. § 82.155(b)(2)(ii) requires the final processor to notify suppliers of appliances that refrigerant must be recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

157. From March 1, 2019 to March 24, 2019, Respondent accepted MVACs from at least 27 different suppliers.

158. From March 1, 2019 to March 24, 2019, Respondent did not have a sign present at the Facility to notify suppliers of MVACs that refrigerant must be recovered from MVACs in accordance with 40 C.F.R. § 82.155(a) before delivery of MVACs to the Facility.

159. From March 1, 2019 to March 24, 2019, Respondent did not provide letters to their 27 suppliers referenced in Paragraph 157, to notify them that refrigerant must be recovered from MVACs in accordance with 40 C.F.R. § 82.155(a) before delivery of MVACs to the Facility.

160. From March 1, 2019 to March 24, 2019, Respondent did not use means equivalent to signs and letters to notify their 27 suppliers referenced in Paragraph 157, that refrigerant must be recovered from MVACs in accordance with 40 C.F.R. § 82.155(a) before delivery of MVACs to the Facility.

161. Therefore, Respondent failed to notify the 27 suppliers referenced in Paragraph 157, that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility.

162. Respondent's acceptances of MVACs from at least 27 suppliers without notifying the suppliers that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the Facility constitutes at least 27 separate unlawful acts pursuant to 40 C.F.R. § 82.155(b)(2)(ii); 42 U.S.C. § 7671g.

163. Respondent's 27 violations of 40 C.F.R. § 82.155(b)(2)(ii) subject Respondent to the issuance of an Administrative Complaint assessing a civil penalty of up to the statutory maximum under 42 U.S.C. § 7413(d)(1)(B).

Proposed Civil Penalty

164. Complainant alleges a total of 217 violations for which it respectfully requests this tribunal order a civil penalty up to the statutory maximum against Respondent for the CAA violations alleged in this Complaint. *See* 40 C.F.R. §§ 22.14(a)(4)(ii); 22.19(a)(4). Complaint asserts that the alleged violations are severe, warranting a penalty up to the statutory maximum. 42 U.S.C. § 7413(e).

Rules Governing this Proceeding

165. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Answer and Opportunity to Request a Hearing

166. If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this

Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

167. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

168. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified below and must serve copies of the Answer on the other parties.

169. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

170. Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

Filing and Service of Documents

171. Respondent must file with the EPA Regional Hearing Clerk the original and one copy of its Answer, including any request for hearing. Respondent may file its Answer with the Regional Hearing Clerk using one of the following methods:

Electronically:

Regional Hearing Clerk
U.S. EPA, Region 5
R5hearingclerk@epa.gov

By Mail:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

172. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules.

173. Complainant hereby consents to service via email. *See* 40 C.F.R. § 22.5(b)(2).

174. Complainant has authorized Amanda Urban, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding.

175. You may contact Ms. Urban at:

Amanda Urban (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-4331
urban.amanda@epa.gov

Settlement Conference

176. Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Natalie Topinka, Environmental Scientist, 312-886-3853 or topinka.natalie@epa.gov.

177. **Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint.** Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the proposed penalty because the parties hold an informal settlement conference.

Separation of Functions and *Ex Parte* Communications

178. Pursuant to 40 C.F.R. § 22.8 of the Consolidated Rules, at no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of § 22.8 shall not apply to any person who has formally recused himself or herself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

Continuing Obligation to Comply

179. Neither payment nor assessment of a civil penalty will affect Respondent's continuing obligation to comply with the Clean Air Act and any other applicable federal, state or local law.

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2024.02.29
12:23:03 -06'00'

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