

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. CAA-08-2008-0029

2008-07-30 PM 04:18

IN THE MATTER OF:)	
)	
Reinaldo Torres Gusman)	COMPLAINT AND NOTICE OF
158 East 3415 South)	OPPORTUNITY FOR HEARING
Salt Lake City, UT 84115)	
)	
Respondent.)	
)	

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d) (1)(B). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("*Rules of Practice.*") 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. EPA alleges that Reinaldo Torres Gusman ("Respondent" or "Mr. Gusman") has violated the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. Those regulations are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction). Specifically, EPA alleges Respondent violated the CAA by disposing refrigerant without prior recovery of refrigerant or without verifying prior recovery. The CAA authorizes the assessment of a civil penalty for violations of the CAA. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge ("ALJ") to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing. Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the *Rules of Practice* for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty of \$15,000 proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the *Rules of Practice* for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America." to:

Regular Mail

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

or

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101.

A copy of the check must be sent to the Regional Hearing Clerk and also to Dana J. Stotsky, Senior Enforcement Attorney, at the addresses provided below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Dana J. Stotsky, Esq., at 1-800-227-8917; extension 6905, or 303-312-6905, or the address below. *Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.*

DEFINITIONS

- I. *Appliance* is defined by 40 C.F.R. § 82.152.3(a) as “any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.”
- II. *Small Appliance* is defined by 40 C.F.R. § 82.152.3(v) as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a 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 and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.
- III. The term “*Motor Vehicle Air Conditioner (“MVAC”)*” means any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. part 82, subpart B. More specifically, 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.]
- IV. The compound *CFC-12* is listed at 40 C.F.R. Part 82, Appendix F, as a Class I, ozone-depleting substance.
- V. *Disposal* is defined by 40 C.F.R. § 82.152.3(e)(1) as the process leading to and including the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water.
- VI. The regulations require equipment used to evacuate refrigerant from MVACs and MVAC-like appliances before they are disposed of must be capable of reducing the system pressure to 102 mm of mercury vacuum under the conditions of the SAE Standard, SAE J1990 (appendix A to 40 CFR part 82, subpart B), 40 C.F.R. § 82.158(l).

VII. All persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal of these appliances must reduce the system pressure to or below 102 mm of mercury vacuum, using equipment that meets the standards set forth in §82.158(l), 40 C.F.R. § 82.156(g).

VIII. 42 U.S.C. section 7413(d) [Federal Enforcement], at subsection (3) provides:

(3) Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may--

(A) issue an administrative penalty order in accordance with subsection (d) of this section....

GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply and are incorporated by this reference into Count 1 of this Complaint:

8. EPA has jurisdiction of this matter under section 113 of the Clean Air Act, 42 U.S.C. section 7413 (“FEDERAL ENFORCEMENT.”)
9. Mr. Reinaldo Torres Gusman (“Respondent,” or “Mr. Gusman.”) is a person, and lives in or near Salt Lake City, Utah.
10. Mr. Gusman is a “person” as that term is defined by section 302(e) of the CAA, 42 U.S.C. Section 7602(e), and thus subject to regulation.
11. Western Metal Recycling (“Western Metals”), located at 4221 West 700 South, Salt Lake City, Utah, 84104, accepts scrap metal and vehicles for salvage and recycling.
12. On or about December 19, 2007, Messrs. Jeffrey Kimes and David Cobb, authorized EPA inspectors, (“the Inspectors,”) conducted an inspection at Western Metals (“the inspection,”) with the consent of Western Metals, to determine compliance with the CAA and its implementing regulations.

13. During the inspection referenced in Paragraph 12 above, the Inspectors observed that on or about December 19, 2007, Respondent disposed of 1990 Toyota Camry DX, Vehicle Identification Number (VIN) JT2SV221E1L0337631, by depositing it on the land at Western Metals.
14. The Inspectors observed during the inspection that the vehicle identified in Paragraph 13 above, included a motor vehicle air conditioner ("MVAC.")
15. During the inspection referenced in Paragraph 12 above, the Inspectors observed the MVAC described in Paragraph 14 above, was pressurized to 45 pounds per square inch pressure (45 psi) and contained the compound Chlorofluorocarbon-12 (CFC-12) refrigerant.

Count 1

(REFRIGERANT DISPOSAL WITHOUT PRIOR RECOVERY OF REFRIGERANT OR WITHOUT VERIFYING PRIOR RECOVERY)

16. During the inspection referenced in Paragraph 12 above, the Inspectors observed that Respondent disposed of a 1990 Toyota Camry DX automobile, Vehicle Identification Number (VIN) JT2SV221E1L0337631, by depositing it on the land at Western Metals on or about December 19, 2007.
17. During the inspection, the Inspectors obtained a 'transaction receipt' from Western Metals, appended hereto as **Attachment 1**, and which documents Western Metals received the vehicle described above from the Respondent on or about the date of the inspection.
18. The EPA Inspectors observed that the vehicle identified in Paragraph 13 above, is a vehicle that included a motor vehicle air conditioner (MVAC).
19. During the inspection referenced in Paragraph 12 above, the Inspectors observed that the MVAC included in the vehicle identified in Paragraph 13 above, was pressurized to 45 pounds per square inch pressure. This is equivalent to 2327 millimeters of mercury positive pressure. This observation was made using pressure gauges, and is displayed in the photograph contained in **Attachment 2**, which is appended hereto below.
20. The Respondent disposed of the MVAC identified in Paragraph 14 without following the practices required by 40 C.F.R. § 82.156(f) by properly evacuating the refrigerant or verifying that refrigerant had been properly evacuated prior to disposal.
21. During the inspection referenced in Paragraph 12 above, the Inspectors obtained samples from the MVAC referenced in Paragraph 14 above, conducted analyses of these samples and determined they contained Chlorofluorocarbon-12 (CFC-12). Such sampling and

analysis was performed using a Neutronics Ultima ID refrigerant identifier. This activity is displayed in the photograph contained in **Attachment 2**, which is appended hereto below.

22. A person who deposits on land a MVAC is required to evacuate the refrigerant and reduce the system pressure to or below 102 millimeters of mercury vacuum (which is equivalent to -1.97 pounds per square inch) using EPA certified equipment identified at 40 C.F.R. 82.158(l), and is required by 40 C.F.R. § 82.156.
23. Respondent, by depositing on land for disposal a MVAC containing CFC-12, a Class 1 ozone depleting compound, and containing a pressure greater than 102 millimeters of mercury vacuum, has failed to comply with conduct required by 40 C.F.R. § 82.156(f), and consequently has engaged in conduct prohibited by regulation.

Count 1- Alternative Pleading (FAILURE TO PROPERLY RECOVER REFRIGERANT)

24. Respondent, as a person disposing a MVAC on land, is required to either recover remaining refrigerant or verify such recovery has occurred. 40 C.F.R. § 82.156(f).
25. All persons recovering refrigerant from MVACs and MVAC-like appliances for purposes of disposal of these appliances must reduce the system pressure to or below 102 mm of mercury vacuum, using equipment that meets that the standards set forth in 40 C.F.R. § 82.158(l). 40 C.F.R. § 82.156(g).
26. During the inspection referenced in Paragraph 12 above, the Inspectors observed that the MVAC included in the vehicle identified in Paragraph 13 above, was pressurized to 45 pounds per square inch pressure. This is equivalent to 2327 millimeters of mercury positive pressure. This observation was made using pressure gauges, and is displayed in the photograph contained in **Attachment 2**, which is appended hereto below.
27. The Respondent disposed of the MVAC identified in Paragraph 14 without following the practices required by 40 C.F.R. § 82.156(g) by properly evacuating the refrigerant and reducing the system pressure to or below 102 millimeters of mercury vacuum using EPA certified equipment identified at 40 C.F.R. § 82.158(l).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g, occurring after March 15, 2004. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy" dated June 1, 1994 ("Penalty Policy"), including Appendix X¹. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$15,000** for the violations alleged in this Complaint. The Penalty Policy and Complainant's Statement as to Determination of Proposed Penalty are enclosed with this Complaint and incorporated herein.

Count 1	\$15,000
TOTAL	\$15,000

28. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. In this case, the maximum would be \$32,500.

To discuss settlement or ask any questions you may have about this process, please contact Dana J. Stotsky, Senior Enforcement Attorney, at 1-800-227-8917; ext. 312-6905, or at the address below.

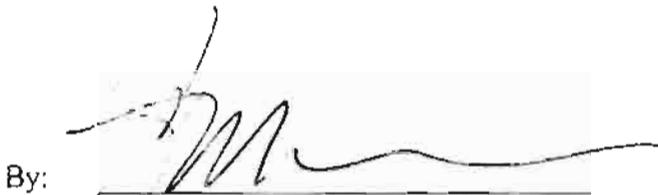
¹ Appendix X is entitled "Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair and Disposal of Appliances Containing Refrigerant" June 1, 1994.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129

Date:

9/30/08

By:


Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date:

9/29/2008

By:


Dana J. Stotsky, Senior Enforcement Attorney
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Colorado Bar # 14717
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FAX: (303) 312-6953
stotsky.dana@epa.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Attachments 1, 2, and 3, and with Exhibits, were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Reinaldo Torres Gusman
158 East 3415 South
Salt Lake City, UT 84115

Date: 9/30/08

By: Judith McTernan
Judith McTernan