



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAY 09 2008

Ref: 8ENF-L

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Mark Douglas Bond, President
Wasatch Metal Recycling
401 West 900 South
Salt Lake City, UT 84101

Re: Complaint and Compliance Order.
Docket Nos. CAA-08-2008-0016
CAA-08-2008-0017

Dear Mr. Bond:

Enclosed are two documents. The first is an administrative complaint seeking penalties for Wasatch Metal Recycling's ("Wasatch") violations of certain requirements of the regulations implementing the Clean Air Act ("CAA"). The second is an administrative order requiring that Wasatch establish and maintain compliance with those same requirements.

Complaint and Notice of Opportunity for Hearing

You are hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413 (d)(1)(B), as amended on November 15, 1990. Enclosed with this Complaint are the Consolidated Rules of Practice, the Stationary Source Civil Penalty Policy, and Complainant's Statement as to Determination of Proposed Penalty, which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that Wasatch failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. These regulations, which are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction) require that a person who takes the final step in the disposal process of small appliances must either recover all remaining refrigerant or verify that the refrigerant has been properly evacuated previously and maintain specific records relating to the proper recovery. The regulations found at 40 C.F.R. Part 82, Subpart F also require that those disposing of larger

appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business.

You have the right to request a hearing regarding the matters set forth in this Complaint. You are encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If you do not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer, you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. You may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. Your signature on a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which you must submit your written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

Compliance Order

In addition, you are hereby served with a Compliance Order (referred to as the "Order") pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended.

EPA alleges in the Order that you failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. The requirements of these regulations, which are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction), are set forth in the "Complaint and Notice of Opportunity for Hearing" section, above. The Order requires you to comply with 40 C.F.R. § 82.156(b) and 40 C.F.R. § 82.156(f).

Violation of the Order may lead to the commencement of a civil action for permanent or temporary injunction, or to assessment and recovery of a civil penalty of not more than \$32,500 per day for each violation, or both, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). In issuing this Order, EPA does not waive its right to seek injunctive relief or civil penalties of up to \$32,500 per day for each day of violation under Section 113(b) of the CAA for any and all violations, or both injunctive relief and civil penalties.

This Order will become effective thirty (30) calendar days from the date of your receipt of the Order, allowing you thirty (30) days in which to request a conference with EPA. Whether or not you request a conference, you may confer informally with EPA concerning the alleged

violations. You may wish to be represented by counsel at the conference.

EPA Contact

If you have any legal questions or would like to discuss the possibility of settlement, please contact:

Dana J. Stotsky (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
(303) 312-6905.

EPA urges your prompt attention to these matters.

Sincerely,

Handwritten signature of Michael T. Risner in cursive script.

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

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA Stationary Source Civil Penalty Policy
4. Complainant's Statement as to Determination of Proposed Penalty
5. Compliance Order

cc w/ Enclosures 1, 4, and 5:
Jeffrey Kimes, 8ENF-AT
Dana Stotsky, 8ENF-L

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. CAA-08-2008-0016

2008 MAY -9 PM 1:56

EPA REGION 8
HEARING ROOM

IN THE MATTER OF:

Wasatch Metal Recycling
401 West 900 South
Salt Lake City, UT 84101

Respondent.

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

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 Wasatch Metal Recycling ("Respondent" or "Wasatch") 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. EPA also alleges that Respondent failed to have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business. 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 \$39,600 proposed in the 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:

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

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. **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.

IV. **Required Practices.**

(b) All persons opening appliances except for small appliances, MVACs, and MVAC-like appliances for maintenance, service, or repair and all persons disposing of appliances except small appliances, MVACs, and MVAC-like appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business. Persons who maintain, service, repair, or dispose of only appliances that they own and that contain pump-out units are exempt from this requirement. This exemption does not relieve such persons from other applicable requirements of this section. 40 C.F.R. § 82.156(b).

(f) Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning, MVACs, or MVAC-like appliances must either:

(1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or

(2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (g) or (h) of this section, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

(3) Persons complying with paragraph (f)(2) of this section must notify suppliers of appliances that refrigerant must be properly removed before delivery of the items to the facility. The form of this notification may be warning signs, letters to suppliers, or other equivalent means. 40 C.F.R. § 82.156(f).

GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply:

8. EPA has jurisdiction of this matter under section 113 of the Clean Air Act, 42 U.S.C. section 7413 ("FEDERAL ENFORCEMENT").

9. Respondent, Wasatch Metal Recycling, with offices located at 401 West 900 South, Salt Lake City, UT 84101, and its operation facility located at 205 West 3300 South, Salt Lake City, UT 84115 ("the facility,") is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to regulation.

10. On or about December 17, 2007 ("the inspection"), Mssrs. Jeffrey Kimes and David Cobb, authorized EPA inspectors, ("the Inspector"), conducted an inspection of Respondent's facility, with the consent of Respondent, to determine compliance with the CAA and its implementing regulations.

Count 1

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

11. During the inspection the EPA inspectors observed Respondent taking the final step in the disposal of appliances and small appliances normally containing refrigerants.

12. During the inspection the EPA inspectors observed that Respondent failed to recover refrigerant from stainless steel refrigeration equipment labeled as containing R408a refrigerant, a small appliance, prior to disposal. This small appliance is identified in a photograph attached to this Complaint and labeled as "ATTACHMENT A."

13. During the inspection the EPA inspectors observed that on or about December 17, 2007, Respondent accepted for disposal the small appliance identified in the preceding paragraph and which contained refrigerant without verification that the refrigerant, which had not leaked previously, had been properly evacuated from the appliance, as required by 40 C.F.R. § 82.156.

14. Respondent, by failing to comply with conduct required by 40 C.F.R. § 82.156, has engaged in conduct prohibited by regulation. 40 C.F.R. § 82.154(a).

Count 2

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

15. During the inspection, the EPA inspectors observed Respondent taking the final step in the disposal of appliances and small appliances normally containing refrigerants.

16. During the inspection, the EPA inspectors observed that Respondent failed to recover refrigerant from refrigeration equipment that included condenser coils and copper tubing normally containing refrigerant, a small appliance, prior to disposal. This small appliance is identified in a photograph attached to this Complaint and labeled as "ATTACHMENT B."

17. During the inspection, the EPA inspectors observed that on or about December 17, 2007, Respondent accepted for disposal a small appliance identified in the preceding paragraph and which contained refrigerant without verification that the refrigerant, which had not leaked previously, had been properly evacuated from the appliance as required by 40 C.F.R. § 82.156.

18. Respondent, by failing to comply with conduct required by 40 C.F.R. § 82.156, has engaged in conduct prohibited by regulation. 40 C.F.R. § 82.154(a).

Count 3

(FAILURE TO HAVE AT LEAST ONE PIECE OF CERTIFIED, SELF-CONTAINED RECOVERY OR RECYCLING EQUIPMENT AVAILABLE)

19. During the inspection the EPA inspectors observed Respondent disposed of one large appliance without having at least one piece of certified, self-contained recovery or recycling equipment available at their place of business.

20. The CAA regulations governing Stratospheric Ozone Protection require Respondent to have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business when they dispose large appliances.

21. Respondent, by failing to comply with conduct required by 40 C.F.R. § 82.154 and 40 C.F.R. § 82.156, has engaged in conduct prohibited by regulation. 40 C.F.R. § 82.154(e).

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 **\$39,600** 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. A summary of the proposed penalties per count in table form:

Count 1	\$18,000.00
Count 2	\$3,600.00
Count 3	\$18,000.00
	\$39,600.00

22. 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 \$65,000.

¹Appendix 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.

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.

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: 5/8/08

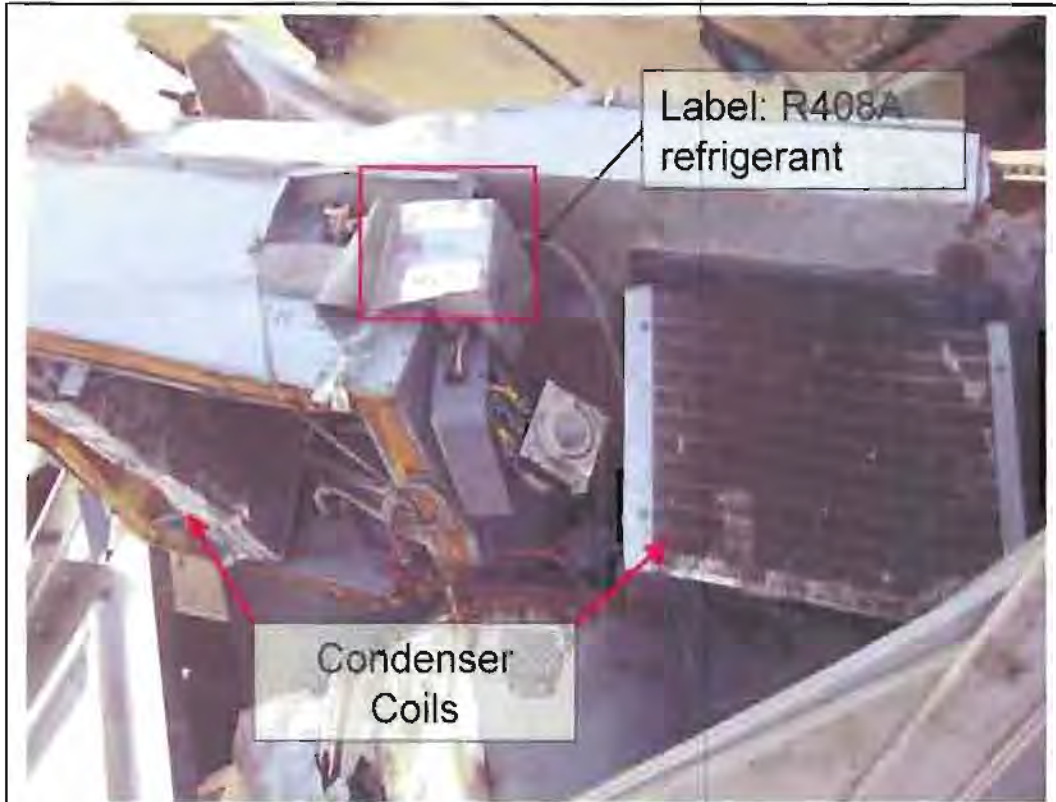
By: Michael T. Pionee
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice



Date: April 24, 2008

By: _____
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Mail Code: 8ENF-L
Denver, Colorado 80202-1146
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

Attachment 'A'



Date: 12/17/2007

Location: Wasatch Metal Recycling

Salt Lake City, UT

Photographer: David Cobb

Inspector: Jeffrey Kimes

Small Refrigeration equipment labeled as normally containing R408A refrigerant. This equipment was found on the western border of the Wasatch property.

Attachment 'B'



Photo Date: 12/17/2007

Location: Wasatch Metal Recycling

Salt Lake City, UT

Photographer: David Cobb

Inspector: Jeffrey Kimes

Small refrigeration equipment including copper tubing and condenser coils. Found near western boundary of Wasatch.

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 and 2, 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:

Mark Douglas Bond, President
Wasatch Metal Recycling, Inc.
401 West 900 South
Salt Lake City, UT 84101

May 9 2008
Date

Judith McTernan
Judith McTernan