

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

07 JAN 18 AM 8:45
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
O'Reilly Automotive, Inc.)
2020 W. 6th Avenue) Docket No. CAA-07-2006-0255
Emporia, Kansas 66801)
)
Respondent.) CONSENT AGREEMENT
) AND
) FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of a civil penalty was initiated on August 28, 2006, pursuant to Section 113(d) of the of the Clean Air Act, ("the Act"), 42 U.S.C. § 7413(d), when the United States Environmental Protection Agency (EPA), Region 7 ("Complainant") issued a Complaint and Notice of Opportunity For Hearing ("Complaint") to O'Reilly Automotive, Inc. ("Respondent"), charging violation of the "Stratospheric Ozone Protection" requirements of Subchapter VI, at Section 608 of the Act, 42 U.S.C. § 7671g. The Complaint proposed a civil penalty of Twenty three Thousand Two Hundred Twelve Dollars (\$23,212) for these violations.

The parties subsequently entered negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order is the result of such negotiations.

CONSENT AGREEMENT

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

3. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

4. Respondent agrees not to contest Complainant's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Final Order.

5. Respondent and Complainant each agree to bear their respective costs and attorney's fees.

6. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. The settlement pursuant to this Consent Agreement shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

8. Respondent shall undertake the following supplemental environmental projects (SEPs), which the parties agree are intended to secure significant environmental or public health protection and improvements. Respondent shall complete the SEPs as follows:

a. Within six (6) months of the effective date of this Consent Agreement and Final Order, Respondent shall expend not less than \$10,000 to design, publish and distribute 60,000 newsletters to members of the regulated community such as professional repair technicians, service providers, and body shop owners. Said newsletter shall include information on the proper handling of freon, certification and record keeping requirements associated with freon, and any prohibitions on selling or distributing any substance that consists in whole or in

part of a class I or class II substance for use as a refrigerant. This project, including design, publication and distribution of the newsletter, will be completed by August 1, 2007.

b. Within three (3) months of the effective date of this Consent Agreement and Final Order, Respondent shall expend not less than \$2,000 to incorporate specific course content for ozone depletion, proper automotive air conditioning system venting, certification and record keeping requirements associated with freon, and retrofitting a R-12 vehicle to an R-134 system into Respondent's training program materials. Within eighteen (18) months of the effective date of this Consent Agreement and Final Order, Respondent shall conduct twelve training sessions to members of the regulated community such as professional repair technicians, service providers and body shop owners and include the above "freon" specific course content in said sessions. This project will be completed by August 8, 2008.

9. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEPs by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEPs.

10. Respondent shall submit SEP Reports to EPA by May 1, 2007, August 1, 2007, February 1, 2008, and August 8, 2008, or until such time as all requirements of the SEPs have been met and all requirements outlined in this section are completed. The SEP Reports shall

contain the following information:

- a. A detailed description of the SEPs as implemented or progress thereof, including but not limited to: 1) a signed affidavit from an officer of the company, memorializing the completed distribution of newsletters including a general description of who received the newsletters and how many newsletters were distributed, as outlined in section 8.a. of this agreement; 2) training session agenda and materials; 3) class rosters from training sessions; and 4) funds utilized.
- b. A description of any problems encountered and the solutions thereto;
- c. Itemized costs of Respondent, documented by copies of purchase orders and receipts or canceled checks;
- d. Upon completion, certification that SEPs have been fully implemented pursuant to the provisions of this Consent Agreement and Final Order;
- e. A description of the environmental and public health benefits resulting from implementation of the SEPs; and
- f. The following statement, signed by its officers: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

11. The SEP Reports shall be submitted to:

Natasha Hazziez
Air Permitting and Compliance
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

12. Stipulated Penalties:

a. In the event that Respondent fails to make the SEP expenditures on a timely basis as required by Paragraph 8, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the expenditure is due until the expenditure is made. Stipulated penalties shall begin to accrue on the day after the expenditure is due, and shall continue to accrue through the date the expenditure is made.

b. Except for failure to timely make SEP expenditures, in the event that the SEPs are not implemented as described in Paragraph 8, and the SEP implementation requirements have not been modified as provided in Paragraph 14 of this Consent Agreement, Respondent shall pay a stipulated penalty as follows:

i. For the SEP described in Paragraph 8.a., \$3,500;

ii. For the SEP described in Paragraph 8.b., \$700.

c. In the event that Respondent fails to submit a SEP Report required by Paragraph 10 above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the Report is due until the Report is submitted. Stipulated penalties shall begin to accrue on the day after the Report is due, and shall to continue to accrue through the day the Report is

submitted to EPA.

d. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

13. Any public statement, oral or written, made by Respondent making reference to the SEPs shall include that the projects were undertaken in connection with the settlement of a Clean Air Act enforcement action.

14. Modifications to this Consent Agreement and Final Order shall be in writing, signed by the parties, and shall be effective upon signature by the Regional Judicial Officer.

15. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty set forth below.

16. Respondent understands that the failure to pay any portion of the civil penalty or any applicable stipulated penalties on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest and late charges thereon at the applicable statutory rate.

FINAL ORDER

Pursuant to Section 113(d) of the of the Clean Air Act, 42 U.S.C. § 7413(d), and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Five Thousand Dollars (\$5,000) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. EPA Region VII
Post Office Box 371099M
Pittsburgh, PA 15251

2. A copy of the check should also be sent to:

Julie L. Murray
EPA- Region VII
Office of Regional Counsel
901 North 5th Street
Kansas City, KS 66101; and

Kathy M. Robinson
EPA- Region VII
Office of Regional Counsel
901 North 5th Street
Kansas City, KS 66101.

3. No portion of the civil penalty, funds expended in the performance of the SEPs, or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. Respondent shall implement and complete the SEPs as set forth in Paragraphs 8 through 13 of the Consent Agreement.

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 113 of the Act, 42 U.S.C. 7413, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Respondent and Complainant shall bear their respective costs and attorney's fees.

7. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

8. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.


COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Julie L. Murray
Julie L. Murray
Attorney
Office of Regional Counsel
Date: 1-17-07

RESPONDENT:

O'Reilly Automotive, Inc.
Emporia, Kansas

By 
General Counsel

Date: 1-15-07

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: January 17, 2007

IN THE MATTER OF O'REILLY AUTOMOTIVE, INC., RESPONDENT
DOCKET NO. CAA-07-2006-0255

CERTIFICATE OF SERVICE

Julie L. Murray
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, KS 66101

Copy by Certified Mail Return Receipt to:

The Corporation Company, Inc.
Resident Agent for O'Reilly Automotive, Inc.
515 South Kansas Avenue
Topeka, Kansas 66603-0000

Bob Gillespie
O'Reilly Automotive, Inc.
233 S. Patterson
Springfield, MO 65801

Date: 1/18/07

Name: Kathy Robinson
Hearing Clerk
Region 7