



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 13 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bernard Senser
CycleMET, Inc.
P. O. Box 9806
Columbus, Ohio 43209

Dear Mr. Senser:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. CAA-05-2015-0024. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 13, 2015.

CycleMET, Inc. must pay the civil penalty according to the schedule set forth in paragraph 33 of the CAFO. Your check(s) must display the docket number
CAA-05-2015-0024.

Please direct any questions regarding this case to Erik Olson, Associate Regional Counsel at (312) 886-6829.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Erik Olson/C-14J
Robert Hodanbosi, Ohio Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

CycleMET, Inc.
Columbus, Ohio,

Respondent.



Docket No. CAA-05-2015-0024

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is CycleMET, Inc. (CycleMET), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), requires the Administrator of EPA (the Administrator) to publish a list of class I substances, including certain chlorofluorocarbons and other chemicals, and to add to that list any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer.

10. Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), requires the Administrator to publish a list of class II substances, including certain hydrochlorofluorocarbons and other chemicals, and to add to that list any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

11. Section 608(a)(2) of the CAA, 42 U.S.C. § 7671g, provides, in part, that the Administrator shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances and industrial process refrigeration.

12. On May 14, 1993, pursuant to Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), U.S. EPA published regulations for the protection of the stratospheric ozone establishing standards and requirements regarding the use and disposal of class I and class II substances

during service, repair, or disposal of appliances and industrial process refrigeration. These regulations, which have been subsequently amended, are codified in Title 40 of the Code of Federal Regulations, Part 82, Subpart F, Recycling and Emissions Reduction.

13. 40 C.F.R. § 82.156(f) requires, in part, that persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance to either: 1) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.156(g) or (h); 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.

14. 40 C.F.R. § 82.166(i) requires, in part, that, persons disposing of small appliances, motor vehicle air conditioners (MVACs), and MVAC-like appliances must maintain copies of signed statements obtained pursuant to 40 C.F.R. § 82.156.

15. Appliance is defined in Section 601(1) of the CAA, 42 U.S.C. § 7671(1), and 40 C.F.R. § 82.152(a) as any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

16. Small appliance is defined in 40 C.F.R. § 82.150(a) 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.

17. MVAC is defined at 40 C.F.R. § 82.152 and 40 C.F.R. § 82.32(d) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle.

18. Disposal is defined in 40 C.F.R. § 82.152 as 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; or (3) the disassembly of any appliance for reuse of its component parts.

19. The Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations of the regulations for the protection of the stratospheric ozone that occurred between January 12, 2009, and December 6, 2013, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) of the CAA limits the 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. 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.

Complainant's Factual Allegations and Alleged Violations

22. CycleMET owns and operates a scrap metal recycling facility (the facility) at 2405 Harrison Road, Columbus, Ohio.

23. Respondent is a person who, at all times relevant for this CAFO, disposed of small appliances and MVACs, or parts thereof, as part of its business operations.

24. Respondent is a "person" as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

25. The regulations at 40 C.F.R. Part 82, Subpart F, apply to Respondent.

26. On September 22, 2011, EPA performed an inspection of Respondent's facility.

27. On May 30, 2012, EPA issued to Respondent a Finding of Violation describing violations of the regulations regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances, 40 C.F.R. Part 82, Subpart F.

28. From August 2, 2010 to October 26, 2011, Respondent accepted appliances and MVACs for recycling or disposal at its facility in the regular course of business.

29. From August 2, 2010 to October 26, 2011, Respondent accepted at least one appliance or MVAC for recycling or disposal at its facility on each of at least 48 days of operation.

30. From, August 2, 2010 to October 26, 2011, Respondent failed to recover any remaining refrigerant from appliances or MVACs in accordance with 40 C.F.R. § 82.156(g) or (h) as required by 40 C.F.R. § 82.156(f).

31. From August 2, 2010 to October 26, 2011, Respondent failed to verify, by, among other things, collection of a signed verification statement from the person from whom the appliances or MVACs were obtained, that the refrigerant had been evacuated from the appliances

or MVACs previously, as required by 40 C.F.R. §82.156(f) on each of at least 48 days of operation.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent’s cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000.

33. Respondent must pay the \$25,000 civil penalty in three installments with interest as follows:

| <u>Installment</u> | <u>Due By</u> | <u>Payment</u> | <u>Principal</u> | <u>Interest (1%)</u> |
|--------------------|---|----------------|------------------|----------------------|
| Payment #1 | Within 30 days of effective date of CAFO | \$8,354.17 | \$8,333.34 | \$20.83 |
| Payment #2 | Within 210 days of effective date of CAFO | \$8,416.66 | \$8,333.33 | \$83.33 |
| Payment #3 | Within 390 days of effective date of CAFO | \$8,375.00 | \$8,333.33 | \$41.67 |

Respondent must pay the installments by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail (a non-U.S. Postal Service will not deliver mail to P.O. Boxes), send a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and docket number of this CAFO.

34. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays each installment of the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Erik Olson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury Pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

41. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

42. The terms of this CAFO bind Respondent, its successors and assigns.

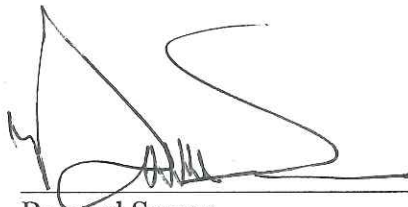
43. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees in this action.

45. This CAFO constitutes that entire agreement between the parties.

CycleMET, Inc., Respondent

2/24/15
Date



Bernard Senser
President
CycleMET, Inc.

United States Environmental Protection Agency, Complainant

3/10/15
Date



George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: CycleMET, Inc.
Docket No. CAA-05-2015-0024

Final Order

This Consent Agreement and Final Order, as agreed to by parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-10-2015

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: CycleMET, Inc.
Docket No: *CAA-05-2015-0024*

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final**

Order, docket number CAA-05-2015-0024, which was filed on

March 13, 2015, this day in the following manner to the following addressees:

Copy by (Certified Mail
Return-Receipt Requested
or E-mail]:

Bernard Senser
CycleMET, Inc.
P.O. Box 9806
Columbus, Ohio 43209

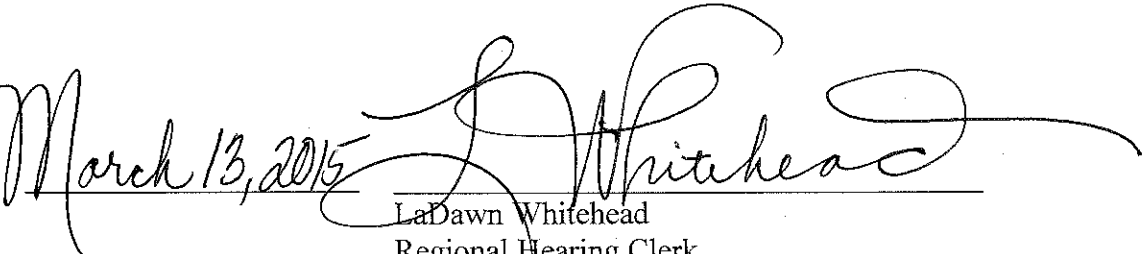
Copy by E-mail to
Attorney for Complainant:

Erik Olson, Associate Regional Counsel
Olson.erik@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

March 13, 2015 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 7285