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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:

Carrier Guam Inc.,

Respondent.

Docket No. CAA-⁰⁹~~9~~-2007- 0035

CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Carrier Guam Inc. ("Carrier Guam" or the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 113(d) of the Clean Air Act (the "Act"), as amended, 42 U.S.C. § 7413(d), for the assessment of a civil administrative penalty against Carrier Guam for violations of the Act's provisions governing stratospheric ozone protection, specifically the requirements set forth at Section 605 of the Clean Air Act, 42 U.S.C. § 7671d, and the implementing regulations set forth at 40 C.F.R. Part 82, Subpart A.

2. Complainant is the Director of the Air Division, United States Environmental Protection Agency ("EPA"), Region IX. Pursuant to EPA Delegation Order Number 7-6-A, dated May 4, 1994, the Administrator of EPA has delegated the authority to file this action under

1 the Clean Air Act to the Regional Administrator of EPA, Region IX, and pursuant to EPA
2 Regional Order Number R1265.05A, dated August 14, 2003, the Regional Administrator re-
3 delegated that authority to Complainant, the Director of the Air Division.

4 3. Respondent is Carrier Guam Inc.

5 B. STATUTORY AND REGULATORY BASIS

6 4. The Clean Air Act Amendments of 1990 added Subchapter VI to the Clean Air
7 Act, 42 U.S.C. § 7671 *et seq.*, which establishes requirements for a federal stratospheric ozone
8 protection program.

9 5. Section 605 of the Act, 42 U.S.C. § 7671d, regulates the production and
10 consumption of "Class II substances", which are listed at Section 602(b) of the Act, 42 U.S.C. §
11 7671a(b).

12 6. Under Section 605(c) of the Act, 42 U.S.C. § 7671d(c), the EPA promulgated
13 regulations, codified at 40 C.F.R. Part 82, Subpart A, that establish standards and set
14 requirements for the production phase-out and use restriction of Class II substances.

15 7. Among these restrictions, 40 C.F.R. § 82.15(b) forbids the importation of Class II
16 substances in excess of consumption allowances held by a party (absent highly limited
17 exemptions involving transshipments, heels, used Class II controlled substances, unexpended
18 consumption allowances, medical device exemptions, or the use of the Class II substances in a
19 process resulting in their transformation or destruction – none applies in the present case) and
20 provides that every kilogram of excess import constitutes a separate violation of 40 C.F.R. Part
21 82, Subpart A.

22 C. ALLEGED VIOLATIONS

23 8. Respondent, a corporation, is a "person" as that term is defined by Section 302(e)
24 of the Act, 42 U.S.C. § 7602(e).

25 9. At the time of the allegations made herein, Respondent imported HCFC-22, a
26 refrigerant listed by EPA pursuant to Section 602(b) of the Act, 42 U.S.C. § 7671a(b), and
27 Appendix B to Subpart A of 40 C.F.R. Part 82, as a Class II controlled substance.

28 10. On March 7, 2004, Respondent imported 4,898 kg of HCFC 22 from Hong Kong.

- 1 11. On June 6, 2004, Respondent imported 9,796 kg of HCFC 22 from Hong Kong.
2 12. On November 6, 2004, Respondent imported 9,798 kg of HCFC 22 from Hong
3 Kong.
4 13. On June 2, 2005, Respondent imported 1,336 kg of HCFC 22 from Hong Kong.
5 14. On October 21, 2005, Respondent imported 6,528 kg of HCFC 22 from
6 Singapore.
7 15. Respondent's collective importation of 32,356 kg of HCFC 22 from outside the
8 United States on the dates listed above in Paragraphs 10 through 14 constitutes 32,356 violations
9 of Section 605 of the Act, 42 U.S.C. § 7671d, and 40 C.F.R. § 82.15(b).

10 **D. RESPONDENT'S ADMISSIONS**

11 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
12 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
13 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
14 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
15 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
16 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
17 proposed Final Order contained in this CAFO.

18 **E. CIVIL ADMINISTRATIVE PENALTY**

19 17. In settlement of the violations specifically alleged in Section I.C of this CAFO,
20 Respondent shall pay a civil administrative penalty of SIXTY-THREE THOUSAND, NINE
21 HUNDRED, AND TWENTY-TWO DOLLARS (\$63,922). Respondent shall pay this civil
22 penalty within thirty (30) days of the effective date of this CAFO, shall make this payment by
23 cashier's or certified check payable to the "Treasurer, United States of America," and shall send
24 the check by certified mail, return receipt requested, to the following address:

25 U.S. Environmental Protection Agency, Region IX
26 P.O. Box 371099M
Pittsburgh, PA 15251

27 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
28 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,

Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Marie Broadwell
Air Division (AIR-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Edgar P. Coral
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

18. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

19. If Respondent fails to pay the assessed civil administrative penalty of SIXTY-THREE THOUSAND, NINE HUNDRED, AND TWENTY-TWO DOLLARS (\$63,922), as identified in Paragraph 17, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will be TWENTY-SEVEN THOUSAND, THREE HUNDRED, AND NINETY-FIVE DOLLARS (\$27,395), and will be immediately due and payable on the day following the deadline specified in Paragraph 17, together with the initially assessed civil administrative penalty of SIXTY-THREE THOUSAND, NINE HUNDRED, AND TWENTY-TWO DOLLARS (\$63,922), resulting in a total penalty due of NINETY-ONE THOUSAND, THREE HUNDRED, AND SEVENTEEN DOLLARS (\$91,317). Failure to pay the civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such

1 collection proceeding.

2 (2) The U.S. Government may collect the debt by administrative offset
3 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
4 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
5 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
6 C.F.R. §§ 13(C) and 13(H).

7 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
8 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
9 business with EPA or engaging in programs EPA sponsors or funds.

10 (4) Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3701 *et seq.*, and 40
11 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges,
12 enforcement expenses, and nonpayment penalties against the outstanding amount that
13 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty
14 specified in Paragraph 17 by the deadline specified in that Paragraph.

15 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
16 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
17 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
18 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
19 (30) days of the effective date of this CAFO.

20 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
21 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
22 based on either actual or average cost incurred (including both direct and indirect costs), for
23 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

24 (c) Enforcement Expenses and Nonpayment Penalties.
25 Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount
26 of the assessed penalty, interest, and handling charges, Respondent shall be liable for the U.S.
27 Government's enforcement expenses, including, but not limited to, attorneys' fees and costs
28 incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for

1 each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten
2 percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and
3 nonpayment penalties accrued from the beginning of such quarter. In addition, pursuant to 31
4 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six
5 percent (6%) annually, may be assessed on all debts more than ninety (90) days delinquent.

6 F. ENFORCEMENT RESPONSE

7 20. This CAFO constitutes an "enforcement response" as that term is used in EPA's
8 Clean Air Act Stationary Source Civil Penalty Policy for the purposes of determining
9 Respondent's "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. §
10 7413(e).

11 G. RETENTION OF RIGHTS

12 21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
13 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
14 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
15 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
16 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
17 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
18 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
19 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

20 22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
21 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 H. ATTORNEYS' FEES AND COSTS

24 23. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
25 this proceeding.

26 I. EFFECTIVE DATE

27 24. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
28 effective on the date that the Final Order contained in this CAFO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

2 J. BINDING EFFECT

3 25. The undersigned representative of Complainant and the undersigned
4 representative of Respondent each certifies that he or she is fully authorized to enter into the
5 terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

6 26. The provisions of this CAFO shall apply to and be binding upon Respondent and
7 its officers, directors, employees, agents, trustees, servants, authorized representatives,
8 successors, and assigns.

9
10 FOR RESPONDENT CARRIER GUAM INC.:

11
12 27 SEPT '2007
13 DATE

14 ORLANDO SAWYER
15 Manager
16 Carrier Guam Inc.
17 Carrier Centre Building #2
18 188 Tun Joaquin Flores Road
19 Tamuning, Guam 96921

20
21 FOR COMPLAINANT EPA:

22 9-27-07
23 DATE


24 DEBORAH JORDAN
25 Director, Air Division
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street
28 San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Carrier Guam Inc., having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA~~09~~-2007-0035)
4 entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY-
5 THREE THOUSAND, NINE HUNDRED, AND TWENTY-TWO DOLLARS (\$63,922), and
6 comply with the terms and conditions set forth in the Consent Agreement.
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8
9 09/28/07
10 DATE

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STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3) (Docket No. CAA-09-2007-0035) was hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Orlando Sawyer
Manager
Carrier Guam Inc.
Carrier Centre Building #2
188 Tun Joaquin Flores Road
Tamuning, Guam 96921

Certified Return Receipt No.

Dated: SEP 28 2007

By:



Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105-3143