



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 09 2012

Certified Mail

Return Receipt Requested

Fred Wilson
Vice President of Store Administration
CarMax Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238

Re: Consent Agreement and Final Order
In the Matter of CarMax Superstores, Inc.
Docket No. CAA-04-2011-9104(b)

Dear Mr. Wilson,

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter and a copy of the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.5(a) of the Consolidated Rules of Practice, as amended. The U.S. Environmental Protection Agency Region 4 has received CarMax Superstores Inc.'s payment of \$6,000.00, meeting the criteria for penalty payment submittal outlined in Section IV of the CAFO. Any questions regarding processing of CarMax Superstores Inc.'s penalty may be directed to Ms. Heather Russell, Financial Management Office, at (513) 487-2044.

If you have any other questions, please contact Carolyn Barr of the South Air Enforcement Section at (404) 562-8314 or Adam Dilts, Associate Regional Counsel, at (404) 562-9581.

Sincerely,

A handwritten signature in cursive script that reads "Beverly A. Spagg".

Beverly A. Spagg

Chief

Air and EPCRA Enforcement Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2012 OCT -9 AM 7:40
HEARING CLERK

IN THE MATTER OF:)
)
CarMax Auto Superstores Inc.,)
)
12800 Tuckahoe Creek Parkway)
Richmond, Virginia 23238)
)
)
)
Respondent.)
_____)

Docket Number: CAA-04-2011-9104(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is CarMax Auto Superstores Inc., a Virginia Corporation authorized to do business in the State of Florida (hereinafter, "Respondent").
2. Consistent with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the requisite joint determination has been made by EPA and the United States Department of Justice that this matter is appropriate for an administrative penalty action.
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.
4. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that

delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

5. Respondent is a “person” as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

II. Statutory and Regulatory Background

6. Pursuant to Section 609 of the CAA, 42 U.S.C. § 7671h, the Administrator of EPA is authorized to promulgate regulations establishing standards and requirements for the servicing of motor vehicle air conditioners. The implementing regulations for Section 609 of the CAA are set forth at 40 C.F.R. Part 82, Subpart B.
7. Pursuant to 40 C.F.R. § 82.32, “motor vehicle air conditioners” (MVAC) means mechanical vapor compression refrigeration equipment used to cool the driver’s or passenger’s compartment of any motor vehicle.
8. Pursuant to Section 609(b) of the CAA, 42 U.S.C. § 7671h(b), and 40 C.F.R. § 82.32, “refrigerant” means any class I or class II substance used in an MVAC. Class I and class II substances are listed in part 82, subpart A, appendix A. “Refrigerant” also includes any substitute substance.
9. Pursuant to 40 C.F.R. § 82.32, “service involving refrigerant” means any service during which discharge or release of refrigerant from the MVAC or MVAC-like appliance to the atmosphere can reasonably be expected to occur.
10. Pursuant to Section 609(b) of the CAA, 42 U.S.C. § 7671h(b), and 40 C.F.R. § 82.32, “approved refrigerant recycling equipment” means equipment certified by the Administrator or an organization approved under § 82.38 as meeting either one of the standards in § 82.36. Such equipment extracts and recycles refrigerant or extracts refrigerant for recycling on-site or reclamation off-site.
11. Pursuant to Section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and 40 C.F.R. § 82.34(a)(1), no person repairing or servicing MVACs for consideration, and no person repairing or servicing MVAC-like appliances, may perform any service involving the refrigerant for such MVAC or MVAC-like appliance without properly using approved refrigerant recycling equipment.
12. Pursuant to Section 609(d) of the CAA, 42 U.S.C. § 7671h(d), and 40 C.F.R. § 82.42(a), any person repairing or servicing MVAC for consideration shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified.
13. Pursuant to Section 113(d) of the CAA, 42 U.S.C § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each day of violation of the CAA that occurred after January 12, 2009.

III. Factual Allegations

14. Respondent operates an automobile repair facility located at 1300 NW 98th Court, in Doral, Florida.
15. On October 28, 2010, Respondent self disclosed to EPA Region 4 that thirty MVAC systems were serviced between August 20, 2010, and September 3, 2010, without the use of refrigerant recycling equipment at its Doral, Florida facility.
16. On October 28, 2010, Respondent self disclosed to EPA Region 4 that it had failed to submit a certification to the EPA for its refrigerant recycling equipment.
17. Respondent violated Section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and C.F.R. § 82.34(a)(1), by servicing for consideration 30 MVAC units without the use of approved refrigerant recycling equipment.
18. Respondent violated Section 609(d) of the CAA, 42 U.S.C. § 7671h(d), and 40 C.F.R. § 82.42(a), by failing to submit a certification to EPA Region 4 regarding the acquisition and use of its refrigerant recycling equipment.

IV. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 13 above, but Respondent neither admits nor denies the factual allegations set forth in paragraphs 14 through 18 above.
20. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.
21. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
22. Respondent certifies that, to the best of its knowledge, information and belief, as of the date of its execution of this CAFO, it is in full compliance with all the relevant requirements of Section 609 of the CAA, 42 U.S.C. § 7671h, and the implementing regulations at 40 C.F.R. Part 82, Subpart B.
23. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from liability for the violations alleged herein regarding Section 609 of the CAA, 42 U.S.C. § 7671h, and 40 C.F.R. Part 82, Subpart B. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit,

to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.

24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

V. Final Order

25. Respondent shall pay a civil penalty of SIX THOUSAND DOLLARS (\$6,000) which shall be paid within thirty (30) days from the effective date of the CAFO.
26. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by forwarding a cashier's or certified check in the amount specified in paragraph 25, payable to: "Treasurer, United States of America," to the following address:

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

The check shall reference on its face the name and the Docket Number of the CAFO (CarMax Store #7110, Docket Number CAA-04-2011-9104(b)).

Alternatively, **within 30 days** of the effective date of the CAFO, Respondent shall pay the penalty by wire transfer. The wire transfer shall be directed to the Federal Reserve Bank of New York, as described below.

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty St.
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

The wire transfer shall reference the name of the Respondent and the Docket Number of the CAFO (CarMax Store #7110, Docket Number CAA-04-2011-9104(b)).

27. At the time of payment, Respondent shall send a separate copy of the check or send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter which shall state that the payment is for the civil penalty owed pursuant to the Consent Agreement and Final Order in the Matter of the CarMax Auto Superstores

Inc., Docket No. CAA-04-2011-9104(b), to the following persons at the following addresses:

Regional Hearing Clerk	Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4	U.S. EPA - Region 4
61 Forsyth Street, S.W.	61 Forsyth Street
Atlanta, Georgia 30303	Atlanta, Georgia 30303

Ms. Carolyn Barr
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim an expense or a deduction or a credit for the civil penalty payment made pursuant to paragraph 25.
29. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. The following person is authorized to receive service for EPA in this proceeding:

Ms. Carolyn Barr
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-8314

33. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

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V. Effective Date

35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

CarMax Auto Superstores Inc.,

By: William D. Nash (Signature) Date: 7/27/12

Name: William D Nash (Typed or Printed)

Title: Executive Vice President (Typed or Printed)

fpc

U.S. Environmental Protection Agency

By: Douglas Neely for
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
Region 4

Date: 7/24/12

APPROVED AND SO ORDERED this 4 day of October, 2012.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of CarMax Auto Superstores Inc., Docket Number: CAA-04-2011-9104(b), to the addressees listed below.

Mr. Fred Wilson
Vice President of Store Administration
CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238

(via Certified Mail, Return
Receipt Requested)

Carolyn Barr
South Air Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Adam Dilts
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

By: 

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303
(404) 562-9511

Date: 10-9-12