



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 27 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUN 27 PM 3:26
REGIONAL HEARING
CLERK

Mr. Paul Albarano
President
Medford Auto Wreckers, Inc.
171 Peconic Avenue
Medford, New York 11763

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Medford Auto Wreckers, Inc.
CAA-02-2008-1209

Dear Mr. Albarano:

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Medford Auto Wreckers, Inc., pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. (the Act), § 7413(d). The Complaint alleges violations of 40 C.F.R. Part 82, Subpart F (CFC Regulations), promulgated pursuant to Section 608 of the Act. The total amount of the penalty proposed by the Complaint is \$77,136.

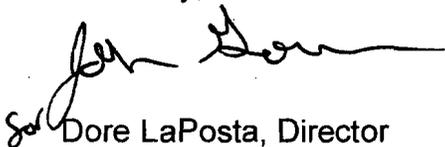
Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If the motion is granted, the penalty proposed in the Complaint will become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

Counsel designated to appear on behalf of the Complainant in this matter is John F. Dolinar, who can be reached at (212) 637-3204 or by mail at the address listed below.

As stated in the section of the Complaint entitled "Settlement Conference," EPA is prepared to pursue settlement of this matter immediately.

I encourage you or your attorney, if you are represented, to contact EPA counsel.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Enclosures: COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

40 C.F.R. Part 22, Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties and the Revocation or
Suspension of Permits

Clean Air Act Stationary Source Civil Penalty Policy, and
Appendix III, Asbestos Demolitions & Renovation Civil Penalty Policy

cc: Regional Hearing Clerk (With: Original Complaint and Certificate of Service; and
one copy of both the Complaint and Certificate of Service):

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Counsel on behalf of EPA:

John F. Dolinar
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 JUN 27 PM 3:26
REGIONAL HEARING
CLERK

In re:

Medford Auto Wreckers, Inc.
Medford, New York

Respondent

In a proceeding under the Clean Air Act,
42 U.S.C. § 7401 et seq., Section 113

**COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

CAA-02-2008-1209

Complaint

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity to Request a Hearing (Complaint) and proposes to assess penalties pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (CAA or "the Act"), 42 U.S.C. § 7413, Section 113, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter, the Director of the Enforcement and Compliance Assistance Division, EPA, Region 2, is duly delegated the authority to issue Complaints on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

EPA alleges that Respondent violated, or are in violation of, requirements or prohibitions of Section 608, 42 U.S.C. § 7671(g) of the Act, and the emission standards for the servicing and disposal of air conditioning or refrigeration equipment containing ozone depleting refrigerants, 40 C.F.R. Part 82, Subpart F, 40 C.F.R. § 82.150 et seq. (CFC Regulations or Subpart F).

Preliminary Statement

1. Respondent, Medford Auto Wreckers, Inc., located at 171 Peconic Avenue, Medford, New York 11763 was, during the time covered by this Complaint, engaged in the business of stripping salvageable parts from vehicles delivered to its facility.

2. The Respondent is a "person" within the meaning of Section 302(e) of the Act, and is therefore subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Statutory and Regulatory Background

3. Section 608 of the Act authorized EPA to promulgate regulations to govern the recycling of refrigerants in stationary systems and to end the practice of venting refrigerants to the air.

4. Section 114(a)(1) of the Act authorizes EPA to require owners or operators of emissions sources to submit specific information regarding their facilities, establish and maintain records, make reports, sample emission points, and to install, maintain, and use such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

5. Under the authority of Section 608 of the Act, on May 14, 1993 EPA promulgated the CFC Regulations or Subpart F, in order to reduce emissions of class I and II refrigerants and their substitutes to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances. 58 Fed. Reg. 28660.

6. The CFC Regulations are applicable to, among other things, any person servicing, maintaining, or repairing appliances, and to persons disposing of appliances, including small appliances and motor vehicle air conditioners (MVACs). 40 C.F.R. § 82.150(b).

7. 40 C.F.R. § 82.152 defines disposal as the process leading to and including, among other things, the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or the disassembly of any appliance for reuse of its component parts.

8. 40 C.F.R. § 82.152 defines MVAC as any appliance that is an MVAC as defined in 40 C.F.R. Part 82, Subpart B, which at 40 C.F.R. § 82.32, defines MVAC as a mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle.

9. 40 C.F.R. § 82.154(a)(1) prohibits a person maintaining, servicing, repairing or disposing of appliances from knowingly venting or releasing into the environment any refrigerant or substitute from such appliances.

10. Pursuant to 40 C.F.R. § 82.154(f), no person may recover refrigerant from small appliances, MVACs, and MVAC-like appliances for purposes of disposal of these appliances unless such person has certified to the Administrator pursuant to § 82.162 that such person has acquired recovery equipment that meets the standards set forth in § 82.158(l) and/or (m), as applicable, and that such person is complying with the applicable requirements of Subpart F.

11. 40 C.F.R. § 82.156(f) requires that all persons who take the final step in the disposal process of, among other things, MVACs or MVAC-like appliances, must either:

1. Recover any remaining refrigerant from the appliance in accordance with paragraph (g) of 40 C.F.R. § 82.156; 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 had been recovered from the appliance, and must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered.

12. Pursuant to 40 C.F.R. § 82.166(i), persons disposing of small appliances, MVACs, and MVAC-like appliances must maintain copies of signed statements obtained pursuant to § 82.156(f)(2).

13. Pursuant to 40 C.F.R. § 82.166(m), all records required to be maintained pursuant to § 82.166 must be kept for a minimum of three years unless otherwise indicated. Entities that dispose of appliances must keep these records on-site.

Findings of Fact

14. Respondent is the owner and/or operator of the Facility located at 171 Peconic Avenue, Medford, NY 11763 (the Facility).

15. On November 22, 2006, the Respondent was in receipt of EPA Information Request reference number CAA 02-2007-1454

16. On December 5, 2006, Respondent submitted a response to the Information Request.

17. In its response to question 9 of the Information Request, the Respondent stated that it owned no equipment to recover, reclaim, or recycle refrigerants from MVACs.

18. In its response to question 11(a) and (b) of the Information Request, the Respondent stated that it receives approximately five vehicles per week, each of which it disassembles into parts for resale purposes before scrapping the remainder to a recycling facility.

19. In its response to question 11(c) of the Information Request, which asked: "Did Medford or Medford's agent or contractor(s) remove and/or recover refrigerant from the motor vehicles it received at the Medford Facility? Respondent responded "yes."

20. In its response to question 11(d) of the Information Request, Respondent provided no documentation related to Medford's verification that refrigerant was evacuated, removed and/or recovered from motor vehicles prior to the delivery of such motor vehicles to the Medford facility.

21. In its response to question 11(d) of the Information Request, Respondent stated that its method of verification that refrigerant was evacuated from MVACs prior to Medford receiving them at the Medford facility was to "check the bleeder valves."

22. On September 5, 2005, Respondent was featured on a television episode of "Dirty Jobs." In this episode, Respondent's technician was engaged in dismantling motor vehicles for parts.

23. The September 5, 2005 "Dirty Jobs" episode clearly shows Respondent's technician cutting a line running to the air conditioning unit of a motor vehicle where the engine is being removed for salvage. When the line is cut, there is a discernable release of gas under pressure from the motor vehicle air conditioning unit.

Conclusions of Law

24. From the Findings of Fact set forth above, EPA finds that the Respondent is a person engaged in the disposal of motor vehicle air conditioners and is therefore subject to 40 C.F.R. Part 82, Subpart F, "Recycling and Emissions Reductions."

25. From the Findings of Fact set forth above, EPA finds that, by knowingly venting or releasing refrigerant into the environment from a MVAC during maintenance, servicing, repairing or disposing, Respondent violated 40 C.F.R. § 82.154(a)(1).

26. From the Findings of Fact set forth above, EPA finds that, by failing to recover the remaining refrigerant or verifying that the refrigerant had been evacuated from the appliance before opening, Respondent violated § 82.156(f).

27. From the Findings of Fact set forth above, EPA finds that, by not maintaining copies of signed statements obtained pursuant to § 82.156(f)(2) for a minimum period of three years, Respondent violated 40 C.F.R. § 82.166(i) and (m).

Proposed Civil Penalty

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Part 19), which provide that the maximum civil penalty per day should be adjusted to \$27,500 per day for each violation that occurred from January 30, 1997 through March 14, 2004 and \$32,500 per day for each violation that occurred on or after March 15, 2004.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider 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, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty for the violation alleged in this Complaint of \$77,136.

Specifically, the Region calculated the penalty in accordance with Appendix X EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy) and the CAA Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (Refrigerant Penalty Policy), dated June 1, 1994. Copies of the CAA Penalty Policy and the Refrigerant Penalty policy are enclosed with this Complaint.

The Refrigerant Penalty Policy directs EPA to follow the general practice used when calculating all CAA civil penalties when assessing a penalty for a violation of a regulation at 40 C.F.R. Part 82, Subpart F. That is, a penalty will be the sum of an economic benefit component and a gravity component.

In this case, EPA determined that the Respondent's derived an economic benefit of \$2,200 from not acquiring a recovery/recycling machine for recovery of refrigerant from an MVAC and an economic benefit of \$6,067 from avoiding the cost of purchasing a recovery/recycling machine. Therefore, the combined total for the economic benefit component is \$8,267.

Regarding the gravity penalty for the violations, the Refrigerant Penalty Policy requires that EPA factor in the potential environmental harm of the violations as well as

the importance of compliance to the regulatory scheme and extent of deviation from the regulations. In this case, the Refrigerant Penalty Policy directs EPA to propose a \$15,000 penalty for each of the following violations: 1) knowingly venting of refrigerant into the environment from an MVAC during maintenance, servicing, repairing or disposing; and 2) failing to recover remaining refrigerant or verifying that the refrigerant had been evacuated from the MVAC before opening the system. In addition, the policy directs EPA to propose a \$1,500 penalty for failure to maintain copies, for a minimum period of three years, of signed statements obtained pursuant to § 82.156(f)(2).

The Refrigerant Penalty Policy also requires that the gravity component of the penalty include a size of the violator (SOV) multiplier and directs EPA to divide the net worth of a business by \$300,000 to determine this multiplier. Based on an analysis of the Respondent's D&B Report and their website, EPA determined that the Respondent's net worth exceeds \$600,000. Hence, in this case, the SOV multiplier is 2. In addition, Part 19 requires that the gravity component be adjusted by 28.95% for inflation for violations that occurred after March 15, 2004.

For two of the violations alleged in this Complaint, applying the SOV multiplier and the inflation adjustment would result in a penalty above the \$32,500 maximum penalty allowed under the CAA. Therefore, for each of these violations, EPA proposes the maximum penalty allowed under the Statute. Inclusion of the SOV multiplier for the third violation results in a preliminary penalty proposal of \$3,000 for the third violation. EPA calculated an inflation adjustment for the third violation of \$869. Therefore EPA proposes a penalty of \$3,869 for the third violation. The combined total for the gravity component is \$68,869.

Following the Clean Air Act Penalty Policy directive, EPA included a penalty for the economic benefit component of \$8,627 and a penalty for the gravity component of \$68,869, which results in a total penalty proposal of \$77,136.

Notice of Opportunity to Request a Hearing

A hearing, if one is held, in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 et seq. The procedures for administrative hearings are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk

within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

John Dolinar
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege to constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, John Dolinar, at (212) 637-3204

or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: 6/27/08

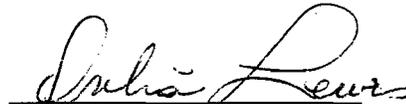


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing Docket Number CAA-02-2008-1209, a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (64 Federal Register 40176 [July 23, 1999]), Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and a copy of the Clean Air Act Statutory Source civil Penalty Policy, by certified mail, return receipt requested, to Mr. Paul Albarano, President, Medford Auto Wreckers, Inc., 171 Peconic Avenue, Medford, New York 11763. I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: June 27, 2008
New York, New York


Orelia Lewis, Secretary