

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Mr. Steve Serra)
Serra Toyota)
1300 Center Point Parkway)
Birmingham, AL 35215)

Respondent)
_____)

Docket Number: CAA-04-2007-1508(b)

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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 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 Serra Toyota (hereinafter, "Respondent").

2. 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.

3. 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.

4. Respondent is a corporation doing business in the State of Alabama since 1988.

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

6. Respondent performs "service involving refrigerant," as defined at 40 C.F.R. § 82.32(h), at its service facility located at 1300 Center Point Parkway, Birmingham, AL 35215.

7. Section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and the regulations promulgated at 40 C.F.R. Part 82, Subpart B, establish that no person repairing or servicing motor vehicle air conditioners (MVACs) for consideration may perform any service on a MVAC involving the refrigerant for such air conditioner unless such person has been properly trained and certified.

8. Regulation 40 C.F.R. § 82.34(a) states that 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 unless any such person repairing or servicing an MVAC has been properly trained and certified by a technician certification program approved by the Administrator pursuant to § 82.40.

9. 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 \$32,500 for each violation of Section 609 of CAA, 42 U.S.C. § 7671h, that occurred after March 15, 2004.

II. Factual Allegations

10. EPA alleges that, on more than one occasion from April 1, 2006, through September 15, 2006, at its Birmingham, Alabama, facility, Respondent performed service for consideration involving the refrigerant of MVAC systems without the use of properly trained and certified technicians. Respondent violated CAA § 609(c), 42 U.S.C. § 7671h(c), and 40 C.F.R. § 82.34(a) by failing to use properly trained and certified technicians while performing service for consideration involving the refrigerant of a MVAC system.

III. Consent Agreement

11. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 9 above, but Respondent neither admits nor denies the factual allegations set out in paragraph 10 above.

12. 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.

13. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

14. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance at all of its automotive repair facilities that perform MVAC work with all relevant MVAC requirements of the CAA at Section 609.

15. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of Section 609 alleged

herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives 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.

16. 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.

IV. Final Order

17. Respondent is assessed a civil penalty of **TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$23,564.00)** which shall be paid within thirty (30) days after the date Serra Toyota receives a copy of the fully executed CAFO.

18. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

US checks in US dollars sent by regular US postal service mail:
U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

For Fedex and other non-US Postal Service express mail:
Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

The check shall reference on its face the name and the Docket Number of the CAFO.

19. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. Jason McDonald
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

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

20. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to paragraph 21.

21. 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.

22. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

23. This CAFO shall be binding upon the Respondent, its successors and assigns.

24. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mr. Jason McDonald
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9201

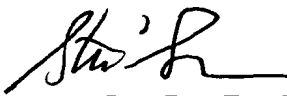
25. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

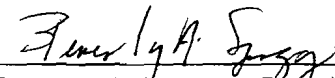
26. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Serra Toyota

By:  Date: 1-4-07
Mr. Steve Serra
President

U.S. Environmental Protection Agency

By:  Date: 12/20/06
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division,
Region 4

APPROVED AND SO ORDERED this 13th day of March, 2007.


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: Serra Toyota, Docket No. CAA-04-2007-1508(b), on the parties listed below in the manner indicated:

Mr. Steve Serra
President
Serra Toyota
1300 Center Point Parkway
Birmingham, AL 35215

(Via Certified Mail
Return Receipt Requested)

Alan Dion
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Jason McDonald
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

Date: 3-13-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404)562-9511