



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 22 AM 9:03
REGIONAL HEARING
CLERK

SEP 17 2009

FEDERAL EXPRESS NEXT DAY

Mia Bitterman, General Counsel
ABCO Refrigeration Supply Corp.
49-70 31st Street
Long Island City, NY 11101

Re: Consent Agreement and Final Order for Violations of the Clean Air Act
Docket No. CAA 02-2009-1223

Dear Ms. Bitterman,

Please find enclosed the finalized Consent Agreement and Final Order (CAFO) embodying the agreement in principle concerning the ABCO Refrigeration Supply Corporation Clean Air Act (CAA) enforcement matter. The CAFO is issued by the U.S. Environmental Protection Agency (EPA) pursuant to 42 U.S.C. §§ 7401 *et seq.*, at 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

This CAFO includes the language agreed upon during settlement negotiations. If you have any questions, please do not hesitate to contact me at (212) 637-3201 or Flaire Mills at (212) 637-3198.

Sincerely,

Evans Stamatakis,
Office of Regional Counsel

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
SEP 22 AM 9:03
REGIONAL HEARING
CLERK

In the Matter of:

ABCO Refrigeration Supply Corporation
Long Island City, New York

Respondent

In a proceeding under Section 113(d) of the
Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER
CAA-02-2009-1223**

Preliminary Statement

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and the attached Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who is duly delegated authority to issue Complaints and Consent Agreements 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.

Title VI of the Act authorizes EPA to promulgate regulations to, among other things, manage the consumption and production of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer. These regulations entitled "Production and Consumption Controls" were promulgated at 40 C.F.R. Part 82 Subpart A.

On July 6, 2009 EPA requested a waiver, pursuant to CAA Section 113(d), of the 12-month limitation on its authority to initiate an administrative action against ABCO Refrigeration Supply Corporation (ABCO or Respondent), which the U.S. Department of Justice (DOJ) granted on July 17, 2009. Pursuant to 40 C.F.R. § 22.13(b), EPA commences this administrative action for violations of 40 C.F.R. Part 82, Subpart A and simultaneously resolves it with the agreement of ABCO by filing this Consent Agreement, effective upon issuance of the attached Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Findings of Fact and Law in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the Final Order attached.

Statutory and Regulatory Background

1. Section 114(a)(1) of the Act authorizes EPA to require persons who are subject to any requirement of the Act to, among other things, establish and maintain records, and make reports in order to determine whether such persons are in violation of the Act.

2. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a state, and an agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Section 602 of the Act requires that EPA publish a list of class II controlled substances and that monochlorodifluoromethane (HCFC-22) be included in that list.

4. Section 603 of the Act requires EPA to, among other things establish reporting requirements.

5. Section 605 of the Act requires EPA to promulgate regulations to, among other things, phase out the consumption of HCFCs in accordance with the schedule set forth in that section and subject to any acceleration as authorized by Section 606 of the Act.

6. In accordance with Sections 114, 602, 603, and 605 of the Act, EPA promulgated sections of 40 C.F.R. Part 82, Subpart A, entitled "Production and Consumption Controls."

7. 40 C.F.R. Part 82, Subpart A imposes limits on the production and consumption of certain ozone depleting substances (ODS), according to specified schedules in 40 C.F.R. Part 82, Subpart A.

8. Pursuant to 40 C.F.R. § 82.1(b), Part 82 Subpart A applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports or exports a controlled product.

9. Pursuant to 40 C.F.R. § 82.3, "class II" refers to controlled substances listed in Appendix B to Subpart A, including but not limited to hydrochlorofluorocarbons.

10. 40 C.F.R. § 82.3 defines "controlled substance" as any substance listed in Appendix A or Appendix B of Part 82, Subpart A, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture.

11. 40 C.F.R. § 82.3 defines "consumption" as the production plus imports minus exports of a controlled substance (other than transshipments, or used controlled substances).

12. 40 C.F.R. § 82.3 defines "consumption allowances" as, among other things, the privileges granted by 40 C.F.R. Part 82, Subpart A to produce and import controlled substances.

13. 40 C.F.R. § 82.3 defines "control period" as the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

14. 40 C.F.R. § 82.3 defines "import" as to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions: (1) Off-loading used or excess controlled substances or controlled products from a ship during servicing; (2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin; and (3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

15. Section 602 of the Act and 40 C.F.R. Part 82, Subpart A, Appendix B lists and classifies monochlorodifluoromethane (HCFC-22), which is also known as a hydrochlorofluorocarbon, or R-22, as a class II controlled substance.

16. Pursuant to 40 C.F.R. § 82.15(b)(1), commencing on January 23, 2003, no person may import class II controlled substances (other than transshipments, heels or used class II controlled substances) for which EPA has apportioned baseline production and consumption allowances, in excess of the quantity of unexpended consumption allowances unless the substances are for use in a process resulting in their

transformation or their destruction, or unless they are produced using an exemption granted in paragraph (f) of § 82.15.

17. Also pursuant to 40 C.F.R. § 82.15(b)(1), every kilogram of excess import constitutes a separate violation of 40 C.F.R. Part 82, Subpart A.

18. 40 C.F.R. § 82.19(a) contains a table that sets forth the names of persons and their individual baseline consumption allowances for the following three (3) class II controlled substances: HCFC-141b, HCFC-22, or HCFC-142b. Also, § 82.19 provides that the effective date for the allowances is January 1, 2003.

19. Respondent is listed on the table, at 40 C.F.R. § 82.19(a), as having a baseline consumption allowance for HCFC-22 of 279,366 kilograms (kg).

20. Pursuant to 40 C.F.R. § 82.24(a), any person who produces, imports, exports, transforms or destroys class II controlled substances must comply with the recordkeeping and reporting requirements provided in § 82.24.

21. Pursuant to 40 C.F.R. § 82.24(a)(1), reports required by § 82.24 must be mailed to the Administrator within 30 days of the end of the applicable reporting period, unless otherwise specified.

22. Pursuant to 40 C.F.R. § 82.24(a)(5), reports and records required by § 82.24 may be used for purposes of compliance determinations.

23. Also pursuant to 40 C.F.R. § 82.24(a)(5), false statements made in reports, petitions and records will be considered violations of Section 113 of the CAA and of Section 1001 of chapter 47 of title 18 of the United States Code, 18 U.S.C. § 1001.

24. Pursuant to 40 C.F.R. § 82.24(c), persons (importers) who import class II controlled substances during a control period must comply with the reporting requirements of 40 C.F.R. § 82.24(c)(1) and the recordkeeping requirements of 40 C.F.R. § 82.24(c)(2).

25. Pursuant to 40 C.F.R. § 82.24(c)(1), for each quarter, an importer of a class II controlled substance (including importers of used class II substances) must submit to the Administrator a report (Class II Importer Quarterly Report) containing, among other things, the following information:

- i. Summaries of the records required in paragraphs (c)(2)(i) through (xvi) of 40 C.F.R. § 82.24 for the previous quarter;
- ii. The total quantity (in kilograms) imported of each class II controlled substance for that quarter;
- iii. The commodity code for the class II controlled substances imported, which must be one of those listed in Appendix K to 40 C.F.R. Part 82, Subpart A;
- iv. The quantity (in kilograms) of those class II controlled substances imported that are used class II controlled substances;
- v. The quantity (in kilograms) of class II controlled substances imported for that quarter and totaled by chemical for the control period to date;
- vi. For substances for which EPA has apportioned baseline production and consumption allowances, the importer's total sum of expended and

unexpended consumption allowances by chemical as of the end of that quarter;

- vii. The quantity (in kilograms) of class II controlled substances imported for use in processes resulting in their transformation or destruction;
- viii. The quantity (in kilograms) of class II controlled substances sold or transferred during that quarter to each person for use in processes resulting in their transformation or eventual destruction; and
- ix. Transformation verifications showing that the purchaser or recipient of imported class II controlled substances intends to transform those substances or destruction verifications showing that the purchaser or recipient intends to destroy the class II controlled substances (as provided in paragraph (e) of 40 C.F.R. § 82.24); and
- x. A list of the HCFC 141b-exemption allowance holders from whom orders were received and the quantity (in kilograms) of HCFC-141b requested and imported.

26. Pursuant to 40 C.F.R. § 82.24(c)(2), an importer of a class II controlled substance (including used class II controlled substances) must maintain the following records, which include the following information:

- i. The quantity (in kilograms) of each class II controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a class II controlled substance;
- ii. The quantity (in kilograms) of those class II controlled substances imported that are used and the information provided with the petition where a petition is required under paragraph (c)(3) of § 82.24;
- iii. The quantity (in kilograms) of class II controlled substances other than transshipments or used substances imported for use in processes resulting in their transformation or destruction;
- iv. The quantity (in kilograms) of class II controlled substances other than transshipments or used substances imported and sold for use in processes that result in their destruction or transformation;
- v. The date on which the class II controlled substances were imported;
- vi. The port of entry through which the class II controlled substances passed;

- vii. The country from which the imported class II controlled substances were imported;
- viii. The commodity code for the class II controlled substances shipped, which must be one of those listed in Appendix K to this subpart;
- ix. The importer number for the shipment;
- x. A copy of the bill of lading for the import;
- xi. The invoice for the import;
- xii. The quantity (in kilograms) of imports of used class II controlled substances;
- xiii. The U.S. Customs entry form;
- xiv. Dated records documenting the sale or transfer of class II controlled substances for use in processes resulting in their transformation or destruction;
- xv. Copies of transformation verifications or destruction verifications indicating that the class II controlled substances will be transformed or destroyed (as provided in paragraph (e) of this section); and
- xvi. Written verifications from a U.S. purchaser that HCFC-141b was imported for the express purpose of meeting HCFC-141b exemption needs in accordance with information submitted under §82.16(h), and that the quantity will not be resold, in cases where HCFC-141b exemption allowances were expended to import the HCFC-141b.

Findings of Fact

27. Respondent is the owner and/or operator of a business headquartered at 49-70 31st Street, Long Island City, New York 11101.

28. Respondent is in the business of purchasing, importing, and distributing heating, ventilating, air conditioning, and refrigeration systems and supplies, including HCFC-22 refrigerants.

29. Since 1961, Respondent has been incorporated in New York State as a for

profit corporation.

30. Pursuant to 40 C.F.R. § 82.19(a), Respondent's annual apportioned baseline consumption allowance for HCFC-22 is 279,366 kg for each control period since January 1, 2003.

31. In a January 23, 2007, letter from Ross Brennan, Chief, Stratospheric Program Implementation Branch, EPA to Fina Vicari of ABCO, EPA informed Respondent that Respondent's allocation of HCFC-22 allowance for the 2007 control period is 279,366 kg, the baseline consumption allowance stated in 40 C.F.R. § 82.19(a), for each control period since January 1, 2003, the effective date of the regulation.

32. In accordance with 40 C.F.R. § 82.24(c)(1), Respondent submitted to the Administrator, Importer Quarterly Reports for the 2007 control period. The following table shows the dates the Administrator received each of the quarterly reports, and the amounts of HCFC-22 the Respondent indicated it had imported during each of the quarters:

2007 Class II Importer Quarterly Report	Date Received by EPA	Reported Quantity of HCFC-22 imported (kg)
1 st	June 11, 2007	0
2 nd	July 11, 2007	121,856
3 rd	October 12, 2007	76,183
4 th	January 11, 2008	76,182
Total		274,221

33. The total reported quantity of imported HCFC-22 is below Respondent's baseline allowance for the 2007 control period of January 1, 2007 through December 31, 2007.

34. On January 23, 2008, in an electronic mail from Michael Senter of ABCO to Mike James of EPA, ABCO informed EPA that for the 2007 control period, Respondent imported a total of 289,454 kg of HCFC-22, which is above its 279,366 kg baseline consumption allowance and above the total reported quantity of 274,221 kg in the quarterly reports.

35. In a February 9, 2009 letter, from Michael Senter, Chief Executive Officer, ABCO, to Ross Brennan, Chief, Stratospheric Program Implementation Branch, EPA, Respondent informed EPA that Respondent misfiled paperwork which resulted in Respondent mistakenly ordering an extra container of HCFC-22.

36. On March 17, 2009, EPA under Section 113(a) of the Act and issued ABCO an administrative Compliance Order CAA-02-2009-1004 (Order), requiring among other things that Respondent:

- i. not import HCFC-22 in excess of its consumption allowance;
- ii. develop a compliance plan to ensure that Respondent will not import ODS in excess of its consumption allowance and will ensure that records and reports be maintained properly and accurately; and

- iii. submit its compliance plan to EPA Region 2 and the EPA Office of Enforcement and Compliance Assistance.

37. On April 20, 2009, Respondent and EPA Region 2 met to discuss the requirements of the Order.

38. At the April 20, 2009 meeting, Respondent articulated its intent to comply with the Order and its desire to bring the entire matter to closure expeditiously.

39. Also at the April 20, 2009 meeting, Respondent submitted the compliance plan required under the Order.

40. EPA Region 2 determined the procedures in the compliance plan and ABCO's actions already taken under this plan ensure compliance with the Order and Part 82, Subpart A.

Conclusions of Law

41. In concurrence with the Findings of Fact stated above, EPA finds that Respondent is a "person" within the meaning of Section 302(e) of the Act.

42. In concurrence with the Findings of Fact stated above, EPA finds that Respondent is subject to 40 C.F.R. Part 82, Subpart A "Production and Consumption Controls."

43. In concurrence with the Findings of Fact stated above, EPA finds that Respondent's importation, in the 2007 control period, of each kg of HCFC-22 over the authorized consumption allowance of 279,366 kg, is a violation of

40 C.F.R. § 82.15(b)(1).

44. In concurrence with the Findings of Fact stated above, EPA finds that Respondent's inaccurate reporting, over the four quarters of the 2007 control period, of the total quantity (in kg) of HCFC-22, is a violation of 40 C.F.R. § 82.24(c)(1).

45. In concurrence with the Findings of Fact stated above, EPA finds that Respondent's failure to properly maintain records of the quantity of HCFC-22 during the 2007 control period, is a violation of 40 C.F.R. § 82.24(c)(2) and Sections 114 and 602 of the Act.

46. In concurrence with the Findings of Fact stated above, EPA finds that each of Respondent's violations of Section 610(d) and 40 C.F.R. § 82.64(d) are violations of the CAA and of 40 C.F.R. Part 82, Subpart C, a regulation promulgated pursuant to the CAA.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

47. Respondent shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of thirty-nine thousand, seven hundred, forty-eight dollars (\$39,748) either by cashiers' or certified check, within thirty (30) days from the date of issuance of the attached Final Order. Respondent shall: (1) clearly type or write the docket number (CAA-02-2009-1223) on the check to ensure proper payment; (2) make the check

payable to the order of "Treasurer, United States of America;" and (3) send the check to:

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

Respondent shall send notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007

48. If Respondent fails to make full and complete payment of the \$39,748 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

i. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.

ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.

iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

49. This Consent Agreement is being entered into voluntarily and knowingly in full settlement of Respondent's alleged violations of the Act set forth herein.

50. Respondent has read the Consent Agreement, finds it reasonable and consents to terms and issuance as a Final Order.

51. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other environmental laws, nor shall this CAFO affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

52. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement or the attached Final Order and explicitly waives its right to appeal the attached Final Order.

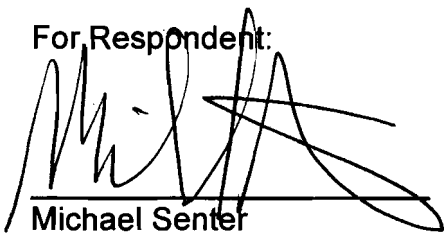
53. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

54. Each party to this CAFO shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement.

55. This CAFO shall be binding on Respondent and its successors and assignees.

56. Each of the undersigned representative(s) to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.


For Respondent:



Michael Senter
Chief Executive Officer
ABCO Refrigeration Supply Corp.

Date Sept. 8, 2009

For Complainant:




Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date September 10, 2009

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement resolving the CAA matter: ABCO Refrigeration Supply Corporation, CAA-02-2009-1223. The Consent Agreement in this matter is hereby approved and issued, as a Final Order, effective immediately.

DATE: 9/15/09



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection
Agency - Region 2

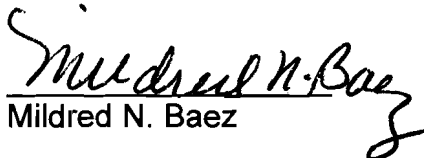
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Consent Agreement and Final Order (CAFO), bearing the docket number CAA-02-2009-1223, by certified mail return receipt to:

Mia Bitterman
General Counsel
ABCO Refrigeration Supply Corp.
49-70 31st Street
Long Island City, NY 11101

I hand-carried the original and a copy of the foregoing CAFO to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: SEP 17 2009
New York, New York


Mildred N. Baez