

FILED

2007 NOV 14 PM 6:04

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U. S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. CAA-09-2007-0032
11)
12 JWS Refrigeration & Air Conditioning,) CONSENT AGREEMENT
Ltd.,) AND FINAL ORDER
13)
14 Respondent.)

15
16 I. CONSENT AGREEMENT

17 Complainant, the Director of the Air Division, United States Environmental Protection
18 Agency ("EPA"), Region IX, and Respondent, JWS Refrigeration and Air Conditioning, Ltd.,
19 agree to settle this civil administrative action brought under the Clean Air Act (the "Act"), as
20 amended, 42 U.S.C. §§ 7401-7671q, and consent to the entry of this Consent Agreement and
21 Final Order (the "CAFO").

22 A. AUTHORITY

23 1. Complainant initiated this civil administrative proceeding for the assessment of a civil
24 penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of
25 Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, by
26 issuing a Complaint and Notice of Opportunity for Hearing ("the Complaint") against
27 Respondent on September 27, 2007.
28

1 Regional Hearing Clerk
2 Office of Regional Counsel (ORC-1)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Marie Broadwell
7 Air Division (AIR-5)
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 Edgar P. Coral
12 Office of Regional Counsel (ORC-2)
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

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

19 7. If Respondent fails to pay the assessed civil administrative penalty of FIFTY-THREE
20 THOUSAND, FOUR HUNDRED, AND EIGHTY-ONE DOLLARS (\$53,481), as identified in
21 Paragraph 5, by the deadline specified in that Paragraph, then Respondent shall also pay a
22 stipulated penalty to EPA. The amount of the stipulated penalty will be TWENTY-TWO
23 THOUSAND, NINE HUNDRED, AND TWENTY-ONE DOLLARS (\$22,921), and will be
24 immediately due and payable on the day following the deadline specified in Paragraph 5, together
25 with the initially assessed civil administrative penalty of FIFTY-THREE THOUSAND, FOUR
26 HUNDRED, AND EIGHTY-ONE DOLLARS (\$53,481), resulting in a total penalty due of
27 SEVENTY-SIX THOUSAND, FOUR HUNDRED, AND TWO DOLLARS (\$76,402). Failure to
28 pay the civil administrative penalty specified in Paragraph 5 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 collection proceeding.

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

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

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

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

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

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

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

5 D. ENFORCEMENT RESPONSE

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

9 E. RETENTION OF RIGHTS

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

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

21 F. ATTORNEYS' FEES AND COSTS

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

24 G. EFFECTIVE DATE

25 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
26 effective on the date that the Final Order contained in this CAFO, having been approved and
27 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

1 H. BINDING EFFECT

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

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


8
9
10
11
12 FOR RESPONDENT JWS REFRIGERATION AND AIR CONDITIONING, LTD.:

13
14 October 18, 2007
15 DATE

16 
17 JOHN W. SCRAGG
18 President
19 JWS Refrigeration & Air Conditioning, Ltd.
20 290 Tun Salas Street, Suite A
21 Tamuning, Guam 96913

22 FOR COMPLAINANT EPA:

23
24
25
26
27
28
29 11/9/07
30 DATE


31 
32 DEBORAH JORDAN
33 Director, Air Division
34 U.S. Environmental Protection Agency, Region IX
35 75 Hawthorne Street
36 San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and JWS Refrigeration and Air Conditioning, Ltd. having entered into the foregoing
3 Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2007-0032) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of
6 FIFTY-THREE THOUSAND, FOUR HUNDRED, AND EIGHTY-ONE DOLLARS (\$53,481),
7 and comply with the terms and conditions set forth in the Consent Agreement.

8
9
10 11/13/07
11 DATE


12 STEVEN JAWGIEL
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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) was hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 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:

John Scragg
JWS Refrigeration & Air Conditioning, Ltd
290 Tun Jose Salas Street, Suite A
Tamuning, Guam 96913

Certified Return Receipt No. 7005 2570 0001 8520 2697

Dated: _____

11-20-07

By: _____

Danielle Carr

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