



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

January 7, 2021

**VIA E-MAIL**  
**DELIVERY RECEIPT REQUESTED**

Todd Benne  
Cohen Brothers, Inc.  
1520 Fourteenth Avenue  
Middletown, Ohio 45044

Email: [tbenne@cohenusa.com](mailto:tbenne@cohenusa.com)

Dear Mr. Benne:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Cohen Brothers, Inc., docket no. CAA-05-2021-0005. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on January 7, 2021.

Pursuant to paragraph 47 of the CAFO, Cohen Brothers, Inc. must pay the civil penalty according to the schedule in the CAFO. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Gillian Asque, Associate Regional Counsel, at 312-886-3283.

Sincerely,

NATHAN  
FRANK

Digitally signed by  
NATHAN FRANK  
Date: 2020.12.21  
16:41:43 -06'00'

Nathan Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail  
Regional Hearing Clerk/via electronic mail  
Gillian Asque/via electronic mail  
Todd Russo, EPA Region 4, [russo.todd@epa.gov](mailto:russo.todd@epa.gov)  
Bob Hodanbosi, OEPA, [bob.hodanbosi@epa.ohio.gov](mailto:bob.hodanbosi@epa.ohio.gov)  
James Kavalec, OEPA, [james.kavalec@epa.ohio.gov](mailto:james.kavalec@epa.ohio.gov)  
Brad Miller, SOAQA, [bradley.miller@hamilton-co.org](mailto:bradley.miller@hamilton-co.org)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<p><b>In the Matter of:</b></p> <p><b>Cohen Brothers, Inc.</b></p> <p><b>Middletown, Ohio</b></p> <p><b>Respondent.</b></p> <hr style="width: 100%;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. CAA-05-2021-0005</b></p> <p><b>Proceeding to Assess a Civil Penalty</b></p> <p><b>Under Section 113(d) of the Clean Air Act,</b></p> <p><b>42 U.S.C. § 7413(d)</b></p>
--	--	---

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Cohen Brothers, Inc. (Cohen), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances.

10. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

11. The purpose of 40 C.F.R. Part 82, Subpart F is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. See 40 C.F.R. § 82.150(a).

12. Under 40 C.F.R. § 82.152, a “person” means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

13. Under 40 C.F.R. § 82.152, an “appliance” is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

14. Under 40 C.F.R. § 82.152, an “MVAC” is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

15. Under 40 C.F.R. § 82.152, an “MVAC-like appliance” is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

16. Under 40 C.F.R. § 82.152, a “small appliance” is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged

terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

17. Under 40 C.F.R. § 82.152, “class I” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix A.

18. Under 40 C.F.R. § 82.152, “class II” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix B.

19. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in this subpart, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses that are specified in § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refers to all other substitutes and end-uses not so specified in § 82.154(a)(1).

20. Under 40 C.F.R. § 82.152, “refrigerant” means, for purposes of 40 C.F.R. Part 82, Subpart F, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

21. Under 40 C.F.R. § 82.152, “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if

it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

22. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

(1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or

(2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

23. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

24. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

25. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

26. The Administrator may assess a penalty greater than \$385,535 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

27. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$385,535 is appropriate for this administrative penalty action.

28. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

29. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

30. At all times relevant to this CAFO, Cohen owned and/or operated scrap recycling facilities (Facilities) at the following locations:

- a. 1797 Valley Street, Dayton, Ohio (Valley Street Facility);

- b. 105 Black Street, Hamilton, Ohio (Hamilton Facility);
- c. 4538 Kellogg Ave, Cincinnati, Ohio (Kellogg Facility);
- d. 5300 Vine Street, Cincinnati, Ohio (Moskowitz Facility);
- e. 12175 Reading Road, Sharonville, Ohio (Sharonville Facility);
- f. 13229 Dixie Highway, Walton, Kentucky (Walton Facility); and
- g. 5101 Farmersville-West Carrollton Road, Miamisburg, Ohio (West Carrollton Facility)

31. Cohen is a corporation, with a place of business at 1520 Fourteenth Avenue, Middletown, Ohio.

32. Cohen is a “person” within the meaning of 40 C.F.R. § 82.152.

33. At all times relevant to this CAFO, at each of the Facilities, Cohen accepted for recycling and disposal “small appliances” within the meaning of 40 C.F.R. § 82.152, that contained or once contained ozone depleting substances or substitutes at its Facilities.

34. At all times relevant to this CAFO, at all Facilities except the Moskowitz facility, Cohen accepted for recycling and disposal “MVACs” within the meaning of 40 C.F.R. § 82.152, that contained or once contained ozone depleting substances or substitutes.

35. The ozone depleting substances or substitutes contained or once contained in the small appliances and MVACs which Cohen accepted for recycling are “refrigerants” within the meaning of 40 C.F.R. § 82.152.

36. Cohen’s recycling of small appliances and MVACs as described in paragraphs 33 and 34 constituted “disposal” within the meaning of 40 C.F.R. § 82.152.

37. As a person who disposes of small appliances and MVACs that contain or once contained refrigerants, Cohen is subject to requirements at 40 C.F.R. Part 82, Subpart F.

38. In March 2019, EPA conducted inspections at Cohen’s Facilities to assess compliance with Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F. During its inspections, EPA noted that Cohen (1) did not recover refrigerant from appliances, nor

use signed statements or contracts verifying refrigerant recovery from appliances at each of its Facilities; (2) had confusing and conflicting signage regarding Cohen's acceptance of appliances at its Kellogg, Hamilton and Walton Facility; and (3) had appliances on-site with cut refrigeration lines without documentation that refrigerant had been recovered at its Hamilton and Sharonville Facility.

39. Based on EPA's inspection and statements made by Cohen during the inspection at the West Carrolton facility, during at least the period of March 18, 2019 to May 29, 2019, Cohen failed either to recover refrigerants from appliances during scrap recycling, or to verify that refrigerants had been recovered by using a signed statement or contract, at that facility, in violation of 40 C.F.R. § 82.155(b).

40. Based on EPA's inspection and statements made by Cohen during the inspection at the Walton facility, during at least the period of March 20, 2019 to May 29, 2019, Cohen failed either to recover refrigerants from appliances during scrap recycling, or to verify that refrigerants had been recovered by using a signed statement or contract, at that facility, in violation of 40 C.F.R. § 82.155(b).

41. Based on EPA's inspections and statements made by Cohen during the inspections, in March 2019, Cohen failed either to recover refrigerants from appliances during scrap recycling, or to verify that refrigerants had been recovered by using a signed statement or contract, at its Valley Street, Hamilton, Kellogg, Moskowitz, and Sharonville in violation of 40 C.F.R. § 82.155(b).

42. At all times relevant to the CAFO, Cohen failed to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before

delivery of the items to, at least, its Hamilton, Kellogg, and Walton facilities, in violation of 40 C.F.R. § 82.155(b)(2)(ii).

43. On June 28, 2019, EPA issued to Cohen a Finding of Violation (FOV) alleging that it violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at its Facilities.

44. On July 31, 2019, representatives of Cohen and EPA discussed the June 28, 2019 FOV (FOV conference).

45. At the FOV conference, Cohen agreed to fully implement a program they had previously initiated to properly recover refrigerant and/or verify proper refrigerant recovery for small appliances and MVACs at its Facilities.

**Civil Penalty**

46. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Cohen's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$106,544.

47. Respondent must pay the \$106,544 civil penalty in 12 installments with interest as follows:

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (4%)</u>
Payment #1	Within 30 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$0.00
Payment #2	Within 60 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$162.78
Payment #3	Within 90 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$73.99
Payment #4	Within 120 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$66.59
Payment #5	Within 150 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$59.19
Payment #6	Within 180 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$51.79
Payment #7	Within 210 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$44.39
Payment #8	Within 240 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$36.99
Payment #9	Within 270 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$29.60
Payment #10	Within 300 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$22.20
Payment #11	Within 330 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$14.80
Payment #12	Within 360 days of effective date of CAFO	\$8,926.14	\$8,878.67	\$7.40

Respondent must pay the installments by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706

Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov)

Gillian Asque  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[asque.gillian@epa.gov](mailto:asque.gillian@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

49. This civil penalty is not deductible for federal tax purposes.

50. If Respondent does not pay timely any installment payment as set forth in paragraph 47, above, the entire unpaid balance of the civil penalty and any amount required by paragraph 51, below, shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established

by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

### **General Provisions**

52. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [asque.gillian@epa.gov](mailto:asque.gillian@epa.gov) (for Complainant), and [tbenne@cohenusa.com](mailto:tbenne@cohenusa.com) (for Respondent).

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

54. The effect of the settlement described in paragraph 53, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 39 - 41 of this CAFO.

55. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

56. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 55, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

57. Respondent certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

58. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

59. The terms of this CAFO bind Respondent, its successors and assigns.

60. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

61. Each party agrees to bear its own costs and attorney’s fees in this action.

62. This CAFO constitutes the entire agreement between the parties.

**Cohen Brothers, Inc., Respondent**

12/21/2020  
Date

  
\_\_\_\_\_  
Kenneth I. Cohen, Chairman/CEO  
Cohen Brothers, Inc.

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2021.01.04  
09:23:34 -06'00'

---

Date

---

Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order  
In the Matter of: Cohen Brothers, Inc.  
Docket No. CAA-05-2021-0005**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.01.06  
15:04:06 -06'00'  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Cohen Brothers, Inc.  
Docket Number: **CAA-05-2021-0005**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0005, which was filed on January 7, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondent:      Todd Benne  
[tbenne@cohenusa.com](mailto:tbenne@cohenusa.com)

Copy by E-mail to  
Attorney for Complainant:      Gillian Asque  
[asque.gillian@epa.gov](mailto:asque.gillian@epa.gov)

Copy by E-mail to  
Attorney for Respondent:      William Hayes  
[whayes@fbtlaw.com](mailto:whayes@fbtlaw.com)

Copy by E-mail to  
Regional Judicial Officer:      Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: January 7, 2021

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD  
Date: 2021.01.07 07:41:01 -06'00'

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5