





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.


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12 FOR RESPONDENT JWS REFRIGERATION AND AIR CONDITIONING, LTD.:

13  
14 October 18, 2007  
15 DATE

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

23 FOR COMPLAINANT EPA:

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26  
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28  
29 11/9/07  
30 DATE

31   
32 \_\_\_\_\_  
33 DEBORAH JORDAN  
34 Director, Air Division  
35 U.S. Environmental Protection Agency, Region IX  
36 75 Hawthorne Street  
37 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   
13 STEVEN JAWGIEL  
14 Regional Judicial Officer  
15 U.S. Environmental Protection Agency, Region IX  
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**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