UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF	)	
	)	**Docket No. CAA-08-2003-0002**
Bob Jones Tire Corporation	)	**Proceeding under Section**
4621 South 900 East	)	**113(d)(1)(B) of the Clean Air Act,**
Salt Lake City, Utah 84117	)	**42 U.S.C. § 7413(d)(1)(B)**
Respondent.	)	
	)	

DEFAULT ORDER /INITIAL DECISION

On April 23, 2004, the United States Environmental Protection Agency, Region 8 ("EPA", "Agency", or "Complainant") filed a motion pursuant to section 22.17(a) of the

Consolidated Rules of Practice, 40 C.F.R. § 22.17(a)[1], to find the Bob Jones Tire Corporation ("Bob Jones", or "the Respondent") in default for failing to file a timely answer to an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint")[2], issued under section 113(d)(1)(B) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d)(1)(B), alleging violations of the CAA as amended, and regulations promulgated pursuant thereto. For the alleged violations, the Complainant is requesting the assessment of an administrative penalty pursuant to section 113(d)(1),(2) and (e) of the CAA, 42 U.S.C. § 7413(d)(1),(2) and (e), in the amount of **Sixty-five Thousand and twenty-nine dollars ($65, 029.00).**

This proceeding is governed by EPA's ***Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits,*** 40 C.F.R. Part 22, Fed. Reg./Vol. 64, N. 141/July 23, 1999 ("Consolidated Rules of Practice," "Consolidated Rules", or "the Rules"). Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), authorizes a finding of default upon failure of the Respondent to timely answer a Complaint. Section 22.15(a) of the Consolidated Rules, 40 C.F.R. § 22.15(a), requires that an answer to the Complaint be filed with the Regional Hearing Clerk within thirty (30) days after service. The Rules further provide that default by Respondent constitutes, for purposes of the pending proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations[3]. Section 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c), provides that when the Presiding Officer finds that default has occurred, a default order shall be issued against the defaulting party, unless the record shows good cause why a default order should not be issued. Section 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c), provides that the relief proposed in the Complaint, or the motion for default, shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the record of these proceedings, or the Act. This order shall constitute an Initial Decision in this matter, under section 22.27 of the Consolidated Rules of Practice, 40 C.F.R. § 22.27.

For the reasons set forth below, the Respondent is found in default for failing to answer the Complaint, and assessed a civil penalty in the amount of **Sixty-five Thousand and twenty-nine dollars ($65,029.00).**

I. FINDINGS OF FACT

1. On August 8, 2003, the United States Environmental Protection Agency, Region 8, issued a Complaint against the Bob Jones Tire Corporation pursuant to section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), as amended, for violation of the

---

[1] Hereinafter, "Motion for Default", Attachment - A.

[2] Hereinafter, "Complaint", Attachment - B

[3] Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a)

"Stratospheric Ozone Protection" requirements of Title VI, section 609 of the CAA, 42 U.S.C. § 7671h, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart B (Servicing of Motor Vehicle Air Conditioners).

2. Title VI of the CAA sets out requirements and prohibitions related to Stratospheric Ozone Protection. Section 609 of the CAA, 42 U.S.C. § 7671h, is contained within Title VI and sets forth requirements and prohibitions regarding the servicing of motor vehicle air conditioners ("MVACs"). Section 609 is supported by regulations promulgated pursuant to the authorities set forth in that section, under 40 C.F.R. Part 82.

3. Under 40 C.F.R § 82.32(h), "service involving refrigerant" means "any service during which discharge or release of refrigerant from the MVAC . . . to the atmosphere can reasonably be expected to occur . . . [and] includes any service in which an MVAC . . . is charged with refrigerant but no other service involving refrigerant is performed (i.e., a 'top off')".

4. 40 C.F.R. § 82.32(f) defines "refrigerant" as "any Class I or Class II substance used in a motor vehicle air conditioner. Class I and Class II substances are listed in part 82, Subpart A, Appendix A. Effective November 15, 1995, refrigerant shall also include any substitute substance."

5. 40 C.F.R. Part 82, subpart A, appendix A lists CFC - 121 as a Class I controlled substance. The Final Rule, 40 C.F.R. Parts 9 and 82, 59 Federal Register 13044, 13081 (March 18, 1994), states that HFC-134a is acceptable as a substitute for CFC-12 in retrofitted and new MVACs.

6. Under section 609(c) of the CAA, 42 U.S.C. § 7671h(c), no person repairing or servicing motor vehicles for consideration may perform any service on a MVAC, involving the refrigerant for such air conditioner, without properly using approved refrigerant recycling equipment. 40 C.F.R. § 82.34(a), in pertinent part, similarly provides: "No person repairing or servicing MVACs for consideration . . . may perform any service involving the refrigerant for such MVAC . . . (1) Without properly using equipment approved pursuant to § 82.36".

7. Under section 609(c) of the CAA, 42 U.S.C. § 7671h(c), no person repairing or servicing motor vehicles for consideration may perform any service on an MVAC involving the refrigerant for such air conditioner unless such person has been properly trained and certified. 40 C.F.R. § 82.34(a), in pertinent part, similarly provides: "No person repairing or servicing MVACs for consideration . . . may perform any service involving the refrigerant for such MVAC . . . (2) 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 40 C.F.R. § 82.40".

8. 40 C.F.R. § 82.42(a), in pertinent part, provides: "(1) No later than January 1, 1993, any person repairing or servicing motor vehicle air conditions for consideration shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified."

9. Respondent's business consisted primarily of the repairing and/or servicing of motor vehicles including, but not limited to MVACs, at one or more facilities, including at the facility that is the subject of this Complaint, which is located at 4621 South 900 East, Salt Lake City, Utah 84117. Respondent received payment for the repairs and services it performed.

10. On October 16, 2002, EPA Inspectors Brenda South and Cindy Reynolds conducted an inspection of Respondent's facility at 4621 South 900 East, Salt Lake City, Utah 84117.

11. During the October 16, 2002, inspection, Ms. South and Ms. Reynolds obtained documentation from the Respondent showing that from May 14, 2002 to August 14, 2002, Respondent repaired and /or serviced twenty-nine (29) MVACs that utilized HFC-134-a as refrigerant. The 29 vehicles containing MVACs, along with their dates of service, are listed in a table reproduced in Paragraph 19 of the Complaint.

12. The documentation referenced in Paragraph 19 of the Complaint shows that the repair and or service performed on the 29 MVACs was service during which discharge or release of refrigerant from the MVACs to the atmosphere could reasonably have been expected to occur and included repairs which required some dismantling of the MVACs, the leak testing of the MVACs, and/or the charging (i.e., "topping-off") of the MVACs.

13. During the time period from May 14, 2002 to August 14, 2002, when the subject violations were documented, Mike Oliver, Chester Martinez, Bob Jenny, Terry Miller, and Ed Bowcott (hereinafter collectively referred to as the "Employees") were employed by Respondent.

14. The documentation referenced in Paragraph 19 of the Complaint shows that the repair and/or service of the 29 MVACs set forth in Paragraph 19 was performed, on behalf of the Respondent, by one or more of the Employees identified in Paragraph 13 above.

15. Respondent allegedly did not provide the Employees with refrigerant recycling equipment, approved pursuant to 40 C.F.R. § 82.36, to use on behalf of Respondent in conjunction with the repair and/or service of the 29 MVACs referenced in Paragraph 19 of the Complaint.

16. In repairing and/or servicing the 29 MVACs referenced in Paragraph 19 of the Complaint,

the Employees allegedly did not properly use refrigerant recycling equipment approved pursuant to 40 C.F.R. § 82.36.

17. During the times the repairs and/or services set forth in Paragraph 19 of the Complaint were carried out, the Employees allegedly were not properly trained and certified by a technician certification program approved by the Administrator pursuant to 40 C.F.R. § 82.40.

18. Respondent allegedly did not certify to the Administrator that it had acquired and was properly using approved refrigerant recycling equipment in service of MVACs involving refrigerant.

19. Respondent allegedly did not certify to the Administrator that the Employees were properly trained and certified to use approved refrigerant recycling equipment in performing service on MVACs involving refrigerant.

20. In accordance with section 22.15(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.15(a), the Respondent was required to file an answer to the Complaint with the Regional Hearing Clerk within 30 days after service of the Complaint.

21. The Complaint was served on the Respondent on August 14, 2003. The Respondent's answer was initially due on or before September 15, 2003[4]. Upon a joint motion by the parties, this initial deadline was extended to October 15, 2003, by Order of the Regional Judicial Officer.

22. Notwithstanding several reminders from Counsel for the Complainant, the Respondent failed to file an answer to Complaint by the October 15, 2003, deadline. A review of the record found that the Respondent, as of the date of this decision, has still not filed an answer to the Complaint.

23. On April 23, 2004, the Complainant filed a Motion to find the Respondent in Default for failing to answer the August 8, 2003 Complaint.

II. DEFAULT BY RESPONDENT

As stated above, under Section 22.15(a) of the Consolidated Rules, 40 C.F.R. § 22.15(a), the Respondent is required to file an answer to the Complaint, within 30 days after service of the Complaint. Further, section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), provides that after motion, a party may be found to be in default for failure to file a timely answer to the

[4] Since the 30th day of the 30-day period within which Respondent's answer was due fell on September 13, 2003, a Saturday, the initial deadline for filing an answer was extended until the next business day. 40 C.F.R. § 22.7(a)

Complaint.

In the instant case, the Complaint was filed with the Regional Hearing Clerk on August 8, 2003. The Complaint was served on the Respondent on August 14, 2003. Respondent's Answer to the Complaint was due to be filed with the Regional Hearing Clerk ". . . within 30 days after service of the Complaint" - by September 15, 2003.[5] A joint motion filed by the parties extended this time, pursuant to an Order by the Regional Judicial Officer, to October 15, 2003. Respondent was given several reminders by counsel for EPA of the October 15, 2003, deadline. Notwithstanding, to date, nearly one-year later, the Respondent has yet to file an answer to the Complaint.

On April 23, 2004, the Complainant filed a Motion for Default Order with the Regional Hearing Clerk. As of the date of that Motion, the Respondent had still not filed an answer to the Complaint. Pursuant to Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), and based on the entire record of these proceedings, I find the Respondent Bob Jones Tire Corp. in default, for failing to file a timely answer to the Complaint. I hereby grant the Complainant's April 23, 2004, Motion for Default.

III. DETERMINATION OF LIABILITY

For a default order to be entered against the Respondent, the Presiding Officer must conclude that Complainant has established a ***prima facie*** case of liability against the Respondent. To establish a ***prima facie*** case of liability, Complainant must present evidence sufficient to establish a given fact . . . which if not rebutted or contradicted, will remain sufficient . . . to sustain judgment in favor of the issue which it supports, but which may be contradicted by other evidence." **Black's Law Dictionary** 1190 (6th ed. 1990).

The facts alleged in the Complaint, and published in part above, as Findings of Fact in this matter, establish jurisdiction over the Respondents and that the Respondents violated the section 609(c) and (d) of the CAA, 42 U.S.C. § 7671h(c) and (d), and regulations set forth under 40 C.F.R. Part 82, Subpart B, pertaining to the servicing of motor vehicle air conditioners. Specifically:

1. Respondent violated section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and 40 C.F.R. § 82.34(a)(1) by repairing and/or servicing MVACs without approved recycling equipment, as set forth on p. 8, in **Count I** of the Complaint.

2. Respondent violated 609(c) of the CAA, 42 U.S.C. § 7671h(c), and 40 C.F.R. § 82.34(a)(2) by repairing and/or servicing MVACs without assuring that their employees had been properly trained and certified, as set forth on p. 9, in **Count II** of the Complaint.

3. Respondent violated section 609(c) of the CAA, 42 U.S.C. § 7671h(d), and 40 C.F.R. §

[5] See Complainant's Motion for Default - Attachment A

82.42(a) by failing to certify to the Administrator that: (1) it had acquired and was properly using approved refrigerant recycling equipment in service on MVACs involving refrigerant and (2) each individual authorized by respondent to perform such service was properly trained and certified, as set forth on pp. 9 and 10, in **Count III** of the Complaint.

Since the Respondent did not file an Answer to the Complaint, it has presented no evidence to contravene the facts alleged in the Complaint. The Findings of Fact, as set forth in **Paragraph I above**, along with the allegations set forth in the Complaint, are incorporated herein by reference. Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17, provides that . . . "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a wavier of Respondent's right to contest such factual allegations."

The Respondent was found in default, in **Paragraph II above**, for failing to file a timely answer to the Complaint. All the facts alleged in the Complaint and set forth herein are hereby admitted, and the Respondent has waived its rights to contest such factual allegations.

Based on the record of these proceedings and the facts herein admitted, I find that the Complainant has established a ***prima facie*** case of liability against the Respondent for violating the CAA, and regulations promulgated pursuant thereto. Accordingly, I further find the Respondent liable for the violations of the **CAA** alleged in the Complaint and set forth herein.

IV ASSESSMENT OF ADMINISTRATIVE PENALTY

Under the section 22.27(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.27(b), ". . . the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act . If the Respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by Complainant in the Complaint . . . , or motion for default, whichever is less."

The Court has made it clear that notwithstanding a Respondent's default, the Presiding Officer must consider the statutory criteria and other factors in determining an appropriate penalty. Katzson Brothers Inc. v. U.S. EPA 839 F.2d 1396 (10th Cir. 1988). Moreover, the Environmental Appeals Board has held that the Board is under no obligation to blindly assess the penalty proposed in the Complaint. Rybond, Inc. RCRA (3008) Appeal No. 95-3, 6 E.A.D. 614 (EAB, November 8, 1996).

Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), provides, in part, that

> "In determining the amount of any penalty to be assessed . . ., the Administrator . . ., shall take into consideration the size of the business, the economic impact of

the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence . . ., payment by the violator of penalties previously assessed for the same violation, the economic benefit of non compliance, the seriousness of the violation . . . and such other factors as justice may require".

On July 19, 1993, the Agency issued its ***"Clean Air Act Civil Penalty Policy Applicable to Persons Who Performs Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners"*** ("MVAC Penalty Policy")[6]. This Penalty Policy is based on the Agency's general enforcement policy for assessing civil penalties: GM-21 and GM-22[7]. The MVAC Penalty Policy incorporates the statutory penalty assessment criteria, set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1).

DISCUSSION.

In determining the amount of the civil penalty to be assessed in this matter, I have relied on the Agency's MVAC Penalty Policy, utilized by the Complainant, which incorporates the statutory factors set forth in section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). First, I considered the economic benefit the Respondent obtained from its non-compliance with the CAA. Next, I considered the gravity of the violations, which includes, but is not limited to, the statutory factors pertaining to the seriousness of the violation. Finally the penalty was adjusted, as appropriate by such factors as: the size of the business, the violators full compliance history, payment by the violator of penalties previously assessed for the same violation, etc.

Economic Benefit.

The Complainant based its economic benefit calculation on a conservative assumption that Respondent had proper refrigerant recycling equipment prior to May 15, 2002 (the first documented dated of violation) and then acquired the requisite equipment as of the date of the penalty calculation, May 20, 2003. The Complainant then calculated the economic benefit from the delayed purchase of approved refrigerant recycling equipment for 13 months, plus the avoided cost of operating equipment to be **Six-hundred and thirty-seven dollars ($637.00).** I find that this is an appropriated assessment of the economic benefit, in this matter.

Gravity Component.

---

[6] Hereinafter, "MVAC Penalty Policy", Attachment - C.

[7] (1) GM-21, Policy on Civil Penalties ("the Penalty Policy"), and (2) GM-22, A Frame work for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties (the "Penalty Framework"), both dated February 16, 1984.

The gravity component takes into account statutory factors pertaining to "the seriousness of the violation" which includes the duration of the violation, and other such factors unique to the case. In the instant case, it was determined that violation of the Agency's regulations resulted in the threat of release, or release of refrigerants into the atmosphere, thereby posing a significant risk to health, welfare and the environment. The Complainant cited the Respondent for three separate violations of the MVAC regulations which it framed as three separate Counts in the Complaint: **Count I, Count II and Count III.**

Count I of the Complaint charged the Respondent with performing services for consideration on MVACs, involving the refrigerant for such air conditioners, without using approved refrigerant recycling or recovery equipment, in violation of section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and regulations set forth under 40 C.F.R. §§ 82.34(a)(1) and 82.36. Repairing and/or servicing MVACs without approved recycling equipment is a serious violation of the MVAC regulations, since it may result in the release of MVAC refrigerants into the atmosphere, thereby posing a significant threat to health, welfare and the environment. As pointed out in the preamble to 40 C.F.R. Part 82, servicing of MVACs includes repairs, leak testing, and "topping off" of air conditioning systems low on refrigerant, as well as any other repairs which requires some dismantling of the air conditioner. Each of these operations involves an unreasonable risk of releasing refrigerant to the atmosphere. The Complainant requested a **$10,000 penalty** for the violations set forth in **Count I** of the Complaint, as specified in paragraph 1 of p. 5 of the Penalty Policy, Appendix IX[8]. The Respondent is assessed a civil penalty of **Ten-thousand dollars ($10,000.00),** for the violations set forth in **Count I** of the Complaint.

Count II of the Complaint charged the Respondent with performing services for consideration on MVACs involving the refrigerant for such air conditioners, using employees who were not properly trained and certified by a technician certification program approved by the EPA Administrator, in violation of section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and regulations set forth in 40 C.F.R. §§ 82.34(a)(2) and 82.40. Employees not properly trained in servicing MVACs may fail to use the proper procedures to prevent the release of refrigerants into the atmosphere, and thereby pose a clear and present danger to health, welfare and the environment. Respondent had five (5) uncertified technicians at the time of the alleged violations. The Complainant requested the assessment of **a $5,000.00 civil penalty** for each uncertified technician, or a total civil penalty, for the violations set forth in **Count II** of the Complaint, of **$25,000.00,** as specified in paragraph 3 of 5 of the Penalty Policy, Appendix IX[9]. The Respondent is assessed a civil penalty of **Twenty-five thousand dollars ($25,000.00)** for the violations set forth in **Count II** of the Complaint.

Count III of the Complaint charges the Respondent with failing to certify to the EPA

---

[8] MVAC Penalty Policy

[9] Ibid.

Administrator that it had acquired and was properly using approved refrigerant recycling equipment in the service of MVACs involving refrigerant and that each individual authorized by Respondent to perform such service was properly trained and certified, in violation of section 609(d) of the CAA, 42 U.S.C. § 7671h(d), and regulations set forth in 40 C.F.R. § 82.42(a). The Respondent's failure to provide the required certifications to EPA seriously jeopardizes the integrity of the Stratospheric Ozone Protection program. These self-certifications are necessary for EPA to effectively manage the program. The Complainant requested the assessment of a **$15,000** penalty for the violations set forth in **Count III** of the Complaint, as specified in the 2nd to the last paragraph of p. 12 of the main body of the Penalty Policy pursuant to the reference in the 1st paragraph of p. 7 of the Penalty Policy, Appendix IX[10]. The Respondent is assessed a civil penalty of **Fifteen-thousand dollars ($15,000.00)** for the violations set forth in **Count III** of the Complaint.

In accordance with paragraph 3 of p. 6 of the MVAC Penalty Policy, Appendix, IX, the Complainant **increased** the penalty component attributable to **Count I by $1,160 to account for the twenty-nine (29) vehicles** that were serviced and/or repaired without proper recycling equipment. The proposed **penalty** was then **increased $2,500 to reflect the size of the violator** A Dun & Bradstreet Report for Respondent (attached hereto as Motion for Default, Attachment - A, Exhibit F) revealed that, as of the date of the penalty calculation, Respondent had a sales volume of $1,600.000. For purposes of the penalty calculation, Complainant assumed that this sales volume equaled a net worth of between $500,001 and $1,000,000 which, according to the 2nd paragraph of the Penalty Policy, Appendix IX, requires a $2,500 increase in the penalty.

The Complainant then added **the initial assessments, and the adjustments**, set forth above, to arrive at a **gravity component of $53,660**, for the penalty. This amount was then **adjusted upward 20%,** in accordance with section 11.B.4.a of the main body of the Penalty Policy (p.16), in recognition of the fact that the regulations pertaining to the servicing of MVACs have been in place since 1999. The Respondent should have been aware of the requirements set forth therein, as evidenced by the presence of outdated refrigerant recycling equipment in a back room of Respondent's facility. See Motion for Default - Attachment A, Exhibit G, Affidavit of Cynthia Reynolds. Respondent's behavior in this regard demonstrated a lack of good-faith effort to comply with the statutory and regulatory requirements of the CAA. **The 20% upward adjustment of the gravity component ($10,732), combined with the base gravity component ($53,660) and the economic benefit ($637), resulted in the total proposed penalty of $65,029.00.**

The Complainant then considered two additional factors set forth in section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), in determining the amount of any penalty to be assessed: (1) whether the violator has paid penalties that have previously been assessed for the same violation, and (2) the economic impact of the penalty on the business.

---

[10] Ibid.

With respect to the first of those two factors, no penalties were previously assessed against the Respondent for such violations as set forth in the Complaint. Regarding the second factor, although EPA sought documentation from Respondent to determine the economic impact of the proposed penalty on Respondent, the documentation provided by Respondent was insufficient to draw a conclusion one way or the other. Despite EPA's repeated attempts to obtain the requisite financial information (See Motion for Default - Attachment A, Exhibits B, C. And E), Since the Respondents did not provide the information, no adjustment was made to the proposed penalty.

By failing to answer the Complaint, the Respondent failed to present any information as to any mitigating circumstances, such as its inability to pay the proposed penalty. Under the "Framework", the burden to demonstrate inability to pay, as with the burden of any mitigating circumstances, rests with the Respondent[11].

IN SUMMARY:[12]

A. **Economic Benefit Component**

The economic benefit from delaying the purchase of approved refrigerant recycling equipment for 13 months plus the avoided cost of operating the equipment.	$637

B. **Gravity Component**

Count 1 - Performing services for consideration on MVACs involving the refrigerant for such air conditioners without using approved refrigerant recycling or recovery equipment.	$10,000
Count 2 - Performing services for consideration on MVACs involving the refrigerant for such air conditioners, for each person who performs such service who is not properly trained and certified by a technician certification program approved by the EPA Administrator (5 uncertified technicians @ $5,000 each).	$25,000
Count 3 - Reporting Violation - Failure to certify to EPA that persons performing the service are using approved recycling equipment and that such persons are properly	

[11] See GM-22, "Framework", p.23.

[12] See Motion for Default, Attachment A, pp. 11-12.

trained and certified.	$15,000
Potential Environment Harm - 29 MVACs serviced using R134-a without properly using approved refrigerant recycling or recovery equipment @ $40 per vehicle).	$1,160
Size of Violator (Net worth of between $500,001 - $1,000,000 based on assumed gross annual sales of $1,600,000).	$2,500
Total Unadjusted Gravity Component:	$53,660
Preliminary Deterrence Amount (Economic Benefit + Unadjusted Gravity Amount):	$54,297
Adjustment Factors: 20% upward adjustment to the gravity component - Bob Jones Tire Corporation should have been aware of section 609 requirements.	$10,732
TOTAL PENALTY AMOUNT	**$65,029**

The Consolidated Rules provide that: ". . . [t]he relief proposed in the Complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding, or the Act"[13]. On the basis of the statutory factors, the MVAC Penalty Policy and the entire administrative record, the Respondent, **Bob Jones Tire Corporation**, is assessed a civil penalty in the amount of **Sixty-five Thousand, and twenty-nine dollars ($65,029.00)**,for its violations of the Clean Air Act, as amended, and regulations promulgated pursuant thereto.

V. CONCLUSIONS OF LAW

1. Respondent, Bob Jones Tire Corporation, is a corporation organized under the laws of the State of Utah.

2. Respondent is a "person" within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7802(e).

3. Respondent operates a facility primarily concerned with the repairing and/or servicing of motor vehicles including, but not limited to, servicing and repairing motor vehicle air

[13] Section 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c).

conditioners that utilize HFC-134 as a refrigerant, and is subject to the "Stratospheric Ozone Protection" requirements of Title VI, section 609 of the CAA, 42 U.S.C. § 7671h, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart B (Servicing of Motor Vehicle Air Conditioners). Respondent receives payment for the repairs and services it performs.

4. On August 8, 2003, the United States Environmental Protection Agency, Region 8 issued a Complaint against the Bob Jones Tire Corporation pursuant to section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), as amended, for violation of the "Stratospheric Ozone Protection" requirements of Title VI, section 609 of the CAA, 42 U.S.C. § 7671h, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart B (Servicing of Motor Vehicle Air Conditioners).

5, Pursuant to section 22.15(a) of the Consolidated Rules, 40 C.F.R. § 22.15(a), the Respondent was required to file an answer to the Complaint with the Regional Hearing Clerk, within 30 days after service of the Complaint - by September 15, 2003.

6. An Order by the Regional Judicial Officer, in response to a Motion for an Extension of Time, by the parties, extended the deadline in paragraph 5 above, to October 15, 2003.

7. Notwithstanding, the Respondent failed to meet the October 15, 2003, deadline and the record indicates that, as of the date of this decision, the Respondent has still not filed an answer to the Complaint.

8. On April 23, 2004, the Complainant filed a motion pursuant to section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), to find the Respondent in default for failing to file a timely answer to the Complaint.

9. Pursuant to section 22.17(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(c), the Respondent is in default for failing to file a timely answer to the Complaint (See **Paragraph II** above).

10. Pursuant to section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), "[d]efault by Respondent constitutes, for the purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations". The Respondent is deemed to have admitted all of the factual allegations in the Complaint including, but not limited to, the allegations set forth in Counts I, II and III, pp 8-10, of the Complaint.

11. Respondent violated section 609(c) of the CAA, 42 U.S.C. § 7671h(c), of the CAA and 40 C.F.R. §§ 82.34(a) and 82.36, as set forth in **Count I** of the Complaint, by repairing and/or servicing MVACs involving the refrigerant for such air conditioners, without properly using approved refrigerant recycling equipment.

12. Respondent violated section 609(c) of the CAA, 42 U.S.C. § 7671h(c), as set forth in **Count II** of the Complaint, by performing the repairs and or services set forth in Paragraph 20 of the Complaint using persons that were not properly trained and certified, by a technician certification program approved by the Administrator, pursuant to 40 C.F.R. C.F.R. §§ 82.34(a) and 82.40, to repair and service MVACs.

13. Respondent violated section 609(d) of the CAA, 42 U.S.C. § 7671h(d) and 40 C.F.R. § 82.42(a), as set forth in **Count III** of the Complaint, by failing to certify to the Administrator that: (1) it had acquired and was properly using approved refrigerant recycling equipment in servicing MVACs involving refrigerant, and (2) each individual authorized by Respondent to perform such service was properly trained and certified.

14. In accordance with section 113(d)(1),(2) and (e) of the CAA, 42 U.S.C. § 7413(d)(1),(2) and (e), Complainant requested that a civil penalty, in the amount of **Sixty-five-thousand, and twenty-nine dollars ($65,029.00)** be assessed against the Respondent for its violations of the CAA and regulations promulgated pursuant thereto.

15. Pursuant to section 22.17(c) of the Consolidated Rules of Practice "The relief proposed in the Complaint . . . shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act".

16. In accordance with section 113(d)(1),(2) and (e) of the CAA, 42 U.S.C. § 7413(d)(1),(2) and (e), and considering the entire administrative record, the Respondent, Bob Jones Tire Corporation is assessed a civil penalty, in the amount of **Sixty-five-thousand, and twenty-nine dollars ($65,029.00)**, for its violations of the CAA and the regulations promulgated pursuant thereto.

DEFAULT ORDER

In accordance with section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17, and based on the entire administrative record, I hereby grant the Complainant's Motion for Default Order and assess an administrative penalty, in the amount of **Sixty-Five Thousand and twenty-nine dollars ($65,029.00)** against the Respondent, **Bob Jones Tire Corporation**, for its violations of the **CAA**, and regulations promulgated pursuant thereto.

No later than 30 days after the date that this Default Order becomes final, Respondents shall submit a cashier's check or certified check, payable to the order of "Treasurer, United States of America," in the amount of **Sixty-Five Thousand and twenty-nine dollars ($65,029.00)** to the following address:

Mellon Bank
EPA Region 8

Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859

Respondent shall note on the check the title and docket number of this administrative action.

Respondent shall serve a photocopy of the check on the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
EPA Region 8
999 18th Street, Suite #300
Denver, Colorado 80202

Each party shall bear its own costs in bringing or defending this action.

Should the Bob Jones Tire Corporation fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Pursuant to the Debt Collection Act, 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, if it is not paid as directed. Interest will be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 40 C.F.R. § 102.13(e).

Also, in accordance with section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay any portion of the assessment of a civil penalty, after this Order becomes final, the Respondent shall be subject to a civil action brought in the appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of Title 26 from the date of the final order or decision). In such and action, the validity, amount and appropriateness of such assessment shall not be subject to review. If the Respondent fails to pay the assessed penalty in a timely manner it shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys 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 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

This Default Order constitutes an Initial Decision, in accordance with section 22.27(a) of the Consolidated Rules, 40 C.F.R. § 22.27(a). This Initial Decision shall become a Final Order 45 days after its service upon a Party, and without further proceedings unless: (1) A party moves

to reopen the hearing ; (2) A party appeals the initial decision to the Environmental Appeals Board; (3) A party moves to set aside a default order that constitutes an initial decision; or (4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

Within 30 days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board.[14]

Where a Respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 of the Consolidated Rules, and that initial decision becomes a Final Order pursuant to § 22.27(c) of the Consolidated Rules, **RESPONDENT WAIVES ITS RIGHTS TO JUDICIAL REVIEW**.

SO ORDERED This 29th Day of September, 2004.

SIGNED
Alfred C. Smith
Presiding Officer

[14] See § 22.30 of the Consolidated Rules.