UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
VALLEY CHEVROLET-GEO, INC.	)	
AND VALLEY CHEVROLET-GEO, INC.	)	
d/b/a VALLEY CHEVROLET-GEO	)	
BODY SHOP,	)	DOCKET NO. CAA-4-97-012
	)	
RESPONDENT	)	

ACCELERATED DECISION

Under consideration is Complainant's motion for accelerated decision, filed May 14, 1998. This case has been brought pursuant to Section 113 (d) of the Clean Air Act, 42 U.S.C. § 7413 (d). Complainant moves for accelerated decision on Counts I-V of the complaint and on the penalty sought in the complaint. The Respondent opposes the motion. (1)

THE COMPLAINT

The complainant alleges in Count I that Respondent's body shop employee, Mack Anthony Church performed repairs or service on motor vehicle air conditioners (MVACs) involving refrigerant, for consideration. Church allegedly worked on at least three automobile MVACs, a 1989 Oldsmobile Eighty-eight Royale on or about January 7, 1997, a 1995 Chevrolet Pickup on or about January 30, 1997 and a 1990 Mazda 626 LX on or about February 13, 1997 when he was not a certified MVAC technician pursuant § 609 of the Clean Air Act. Complainant alleges that Respondent's use of Church to perform service or repair on MVACs is a violation 40 C.F.R. § 82.34 (a) (2).

In Count II Complainant alleges that Respondent employed Kevin Brice Alderman at the body shop as an automotive technician and that Alderman also performed service or repair on MVACs involving refrigerant, for consideration, on at least two

automobiles, a 1988 Chevrolet Camaro IROC Z on or about April 25, 1997 and a 1988 Honda Accord LX on or about April 15, 1997. Alderman, Complainant alleges, was not a certified MVAC technician under § 609 of the Clean Air Act. Complainant alleges that Respondent's use of Alderman to perform service or repair on MVACs is a violation 40 C.F.R. § 82.34 (a) (2).

Count III alleges that Respondent employed Jimmy McCurry as an automotive repair technician and that McCurry performed service or repair on a MVAC involving refrigerant, for consideration, on a 1989 Oldsmobile automobile on or about January 29, 1997. McCurry was not a certified MVAC technician under § 609 of the Clean Air Act. Complainant alleges that Respondent's use of McCurry to perform service or repair on MVACs is a violation 40 C.F.R. § 82.34 (a) (2).

Count IV alleges that Respondent employed Dennis Wolfe at the body shop as an automotive repair technician and that he performed service or repair on MVACs involving refrigerant, for consideration, on at least seven automobiles, a 1988 Chevrolet Camaro IROC Z on or about March 14, 1997, a 1992 Chevrolet Geo Storm on or about June 12, 1997, a 1988 Honda Accord LX on or about March 24, 1997, a 1990 Mazda 626 LX on or about February 13, 1997, a 1992 Chevrolet Corsica LT on or about March 11, 1997, a 1989 Chevrolet Truck C1500 on or about April 25, 1997, and a 1985 GMC Jimmy S15 on or about May 26, 1997. When Wolfe performed the service or repairs, Complainant alleges, he was not a certified MVAC technician under § 609 of the Clean Air Act. Complainant alleges that Respondent's use of Wolfe as a technician to perform service or repair on MVACs is a violation 40 C.F.R. § 82.34 (a) (2).

Count V alleges that Church and Alderman when they serviced or repaired the MVACs involving refrigerant in the five cars identified in Counts I and II, they did so without approved refrigerant recycling or recovery equipment, in violation of Section 609 (c) of the Clean Air Act, 42 U.S.C. § 7671h (c) and 40 C.F.R. § 82.34 (a) (1).

Complainant proposes assessing Respondent a civil penalty of $40,850.

FINDINGS AND CONCLUSIONS

Complainant's Showing

The Complainant urges in its motion for accelerated decision that no genuine issue of material fact exists as to the liability of Respondent for the violations alleged in the complaint.

Counts I-IV allege that Respondent used four uncertified technicians when servicing MVACs Three of them were employed at Respondent's body shop and one at the service department. Respondent denies Counts I and II but concedes in its answer the material elements of Counts III and IV.

Count I is supported by the affidavit of Mack Anthony Church. Church was employed by the Respondent from April 9, 1996 to April 10, 1997. He repaired vehicles with body damage. He states that he is not a certified technician for purposes of servicing MVACs or working with refrigerant. In addition to repairing body damage, he was occasionally required to repair or replace non-body parts, including components of the engine, electrical system and heating and cooling systems. He attests as follows:

> In many vehicles I repaired the MVAC refrigerant system would have ruptured and no refrigerant would be left in the system as damaged air compressors or ruptured refrigerant lines indicated that the closed pressure system containing refrigerant had been pierced. In other vehicles damage to the front-end would result in bending and distortion of the air conditioning system condenser or compressor, as they are usually made of soft aluminum, but the refrigerant lines and system would be intact and charged with refrigerant.

Repairs to the body or fender of a vehicle require removal or replacement of the MVAC or parts of the MVAC. When refrigerant lines are still intact and no ruptures or other damage indicate that the refrigerant has escaped, Church explains, it is then necessary to remove all refrigerant from an MVAC charged with refrigerant prior to removing or repairing an MVAC. He represents that when the refrigerant had to be removed, Respondent directed him to open the refrigerant ports of the MVAC and allow all the refrigerant to vent into the atmosphere. Church attaches four copies of Respondent's body shop work orders or invoices to his affidavit. He maintains that he performed the repair work described on each invoice, and that that work included repair or replacement of the MVAC or MVAC parts described on each work order.

The repairs listed on invoice Exhibit A, the work order for a 1991 Buick Century, dated July 24. 1996, included replacing the air conditioning condenser of the MVAC. Church states that he opened the refrigerant ports of the MVAC and allowed the refrigerant to vent into the atmosphere. Church claims that he did not use a recycling or recapture evacuation device. While he replaced the Buick's air conditioning condenser, he did not recharge it. The recharging of the vehicle's condenser was done outside the body shop. Church also represents that he did the work listed on repair estimate Exhibit B. That estimate, dated January 7, 1997, was for a 1989 Oldsmobile Eighty-eight Royale. The estimate was prepared by Dennis Odum and the work order included replacing the air conditioning condenser of the MVAC. Church attests that he also opened the refrigerant ports on the Oldsmobile Eighty-eight and allowed the refrigerant in the system to vent into the atmosphere. He did not use a recycling or recapture device. Again, he states that he replaced the air conditioning condenser which is identified on the invoice.

Exhibit C, a repair estimate dated January 30, 1997, for a 1995 Chevrolet Pickup K1500 was prepared by David Hefner for State Farm Insurance. Church represents he performed the same work on the Chevrolet Pickup that he did on the vehicles represented by Exhibits A and B. He claims he removed the MVAC condenser, opened the refrigerant ports and replaced the condenser. No approved refrigerant recycling or recapture device was used, he explains. Exhibit D is a copy of a repair estimate prepared by Dennis Odum, dated February 13, 1997, for a 1990 Mazda 626 LX. Church claims he also removed the MVAC condenser, opened the refrigerant ports and replaced the condenser on the Mazda.

Church points out that each customer in Exhibits A-D was billed for 1.4 hours of labor for evacuation and recharge, which is the standard charge suggested by Respondent's maintenance schedules when the mechanic uses a certified refrigerant evacuation equipment.

In addition to obtaining Church's affidavit, on June 24 and July 17, 1997, Complainant sent § 114 letters [(2)] to Respondent and requested copies of invoices or work orders for the repair of motor vehicle air conditioners for the period July 1, 1996 through June 30, 1997, performed at the body shop or performed on the behalf of the body shop by any other entity. Complainant also sent § 114 letters to the customers of Respondent requesting copies of invoices or estimates for the Church repairs. Complainant received two substantive replies from Respondent's customers which enclosed the same estimates provided by Church for the 1990 Mazda and 1995 Chevrolet Pickup truck. In addition, Respondent supplied work orders or invoices for the cars that had air conditioners repaired or serviced at the body shop. The work orders for the vehicles verify that Church worked on the cars identified in his affidavit.

Count II is supported by the affidavit of Kevin Brice Alderman. Alderman worked at Respondent's body shop from March 1997 to May 15, 1997. He states that he repaired body damage at Respondent's body shop. Alderman states that he is not a certified technician for purposes of servicing MVACs and that while he worked at Respondent's body shop there was no certified MVAC evacuation or recovery equipment. Alderman represents that on some occasions the refrigerant lines and systems on the cars he was repairing would be intact and charged with refrigerant. He also states that MVAC refrigerant system lines, or other MVAC components, would have to be removed to replace the radiator and/or radiator support system in some vehicles. When

repairing or removing an MVAC, he explains, it is necessary to remove all refrigerant from an MVAC charged with refrigerant prior to removing or repairing an MVAC.

Alderman represents that on two occasions he vented refrigerant from a charged MVAC at the direction of the body shop service manager. He could not recall the type of automobile he worked on when he vented the refrigerant. But the complaint indicates that they were a 1988 Chevrolet Camaro IROC Z on or about April 25, 1997 and a 1988 Honda Accord LX on or about April 15, 1997. The invoices and estimates submitted by Respondent, pursuant to the July 14, 1997 § 114 request, identify Alderman as having worked on those automobiles and they indicate that service was provided to MVACs. None of the other invoices supplied by Respondent in response to the § 114 request show Alderman as having worked on vehicles where repairs or service was performed on MVACs during the period February 1, 1997 through June 30, 1997.

Church and Alderman both claim that Respondent's managers told them to open the refrigerant ports of the MVAC and to vent all the refrigerant into the atmosphere. Church and Alderman represent that Respondent's managers were aware that refrigerant might be in the MVACs and that use of a refrigerant recapture or recycling device was required by EPA regulations. Alderman and Church claim they told Respondent's managers that it was necessary to use certified refrigerant recovery equipment and certified technicians.

Complainant, citing 40 C.F.R. § 82.34 (a) (1) and(2), urges that when replacing major components of a MVAC certified technicians and proper equipment must be utilized at least twice. First, the refrigerant must be evacuated from the charged MVAC into proper recovery equipment before dismantling the MVAC. Second, after the MVAC has been replaced or repaired, a certified technician and proper equipment are necessary to recharge the MVAC.

Counts III and IV Complainant alleges that Jimmy McCurry, an employee of Respondent's service department, serviced the MVAC in a 1989 Oldsmobile on January 29, 1997 and Dennis Wolfe, an employee at Respondent's body shop, performed service or repair on MVACs on seven automobiles, a 1988 Chevrolet Camaro IROC Z on or about March 14, 1997, a 1992 Chevrolet Geo Storm on or about June 12, 1997, a 1988 Honda Accord LX on or about March 24, 1997, a 1990 Mazda 626 LX on or about February 13, 1997, a 1992 Chevrolet Corsica LT on or about March 11, 1997, a 1989 Chevrolet Truck C1500 on or about April 25, 1997, and a 1985 GMC Jimmy S15 on or about May 26, 1997. Respondent concedes that Wolfe and McCurry were not certified MVAC technicians when they repaired or serviced MVACs in the vehicles alleged in the complaint.

Count V alleges that when Church and Alderman serviced the MVACs of the five cars identified in Counts I and II, they allowed the refrigerant in the air conditioning system to escape directly into the atmosphere. Respondent concedes that its body shop did not have or maintain approved refrigerant recycling or recovery equipment during the period that is the subject of the complaint. Respondent admits that it services MVACs at the body shop and the service department for consideration. The affidavits of Alderman and Church and the invoices establish that MVACs were serviced at the body shop by Church and Alderman at the time that Respondent admits that no recycling or recovery equipment was available at the body shop. Moreover, Respondent concedes that Dennis Wolfe, an uncertified technician, on seven separate occasions, serviced MVACs at the body shop by charging MVACs with refrigerant.

Respondent's Opposition to the Motion

Respondent responds to Count I by stating that it does not believe that Church is telling the truth; to Count II Respondent denies that any refrigerant escaped into the atmosphere, although it concedes that uncertified technicians worked on or serviced the MVACs in the cars listed in the complaint in Count II; to Count III and IV Respondent states that McCurry and Wolfe were certified but that they were not certified by a technician certification program approved by the Administrator, to Count V Respondent concedes that "on several occasions Valley Chevrolet body shop employees improperly charged systems after they had been repaired" but it denies that any refrigerant was vented into the atmosphere. Respondent's arguments

are not supported with references to documents or statements in its prehearing exchange, although some of the representations reflect its prehearing exchange and answer.

Respondent has filed the affidavits of five current employees, Dennis Odom, Body Shop Manager, Dennis Wolfe, Body Shop Foreman, Stephen Scott, body shop employee, Darrin Greene, body shop employee, and David Coffey, Fixed Operations Director. In his affidavit, Odom admits that he did not know that charging an HVAC system was a violation of the regulations and that he is aware of at least one occasion when an HVAC system was charged at Respondent's body shop by a person not licensed to do such work. While admitting to at least one violation, Odom asserts that he has never observed, seen or heard any supervisor or manager instruct an employee to vent an HVAC system into the atmosphere. Odom also notes that before September of 1997, Respondent's policy was to have HVAC charging and discharging done at its service center on U.S. highway 321, or at a separate contractor. Since September of 1997, when Respondent purchased the required certified equipment, this equipment has been used exclusively to perform HVAC charging and discharging work at the body shop. In addition to his statements regarding operations at Respondent's facility, Odom offers testimony concerning Complainant's witness Church. Odom testifies that Church is angry with Respondent because of a dispute over vacation pay and that Church stated that he would "get even" with Respondent. Odom also maintains that Church did not report income earned doing body shop work while he was self-employed for state or federal income tax purposes.

The remaining affidavits repeat much of Odom's testimony. Wolfe, Coffey, Scott and Greene all repeat Respondent's body shop policy of having cars that required HVAC charging or discharging sent to the service center. In addition to attesting to the policy Coffey also offers a flow chart depicting the policy's operation. He adds further that he can recall specific occasions on which Respondent towed vehicles over to the main service facility for MVAC service and that Respondent has had two pieces of certified MVAC equipment at its service facility since he was hired in February of 1994.

Scott and Greene both state that no one ever instructed them, nor did they ever hear anyone else instructed to vent or charge an HVAC on an automobile at Respondent's facility. Greene offers his opinion that he would have known if any venting was occurring at the facility because the shop is small and has no walls or other barriers between cars. Scott adds, if Church did discharge an HVAC, he did so on his own and not on someone else's instructions. Based on his experience, Scott asserts that the employees who work on HVAC systems are generally familiar with the relevant regulations and that Church was or should have been familiar with any such regulations. In addition, Wolfe and Scott both express the opinion that refrigerant has already leaked out of the majority of vehicles that come to the body shop with front end damage, obviating the need for any discharging.

The other employees, with the exception of Coffey, also repeat or expand on Odom's allegations that Church is dishonest and is seeking revenge against Respondent. Wolfe, and Scott repeat the allegation that Church failed to report earned income to state and federal tax authorities. Scott and Greene add that Church, while working for a cable TV company, "pocketed" fees from cable customers for reconnecting them to the system without informing the cable company. Finally, Wolfe, Scott and Greene all attest that Church claimed that he would "get even" with Respondent and Odom because he was denied vacation pay.

Complainant's Reply to Respondent

Complainant urges in its reply that Respondent's affidavits do not refute any element of liability of any of the violations. Complainant points out that Respondent's claim -- that no person at Respondent's business instructed Complainant's witnesses to release refrigerant from charged MVACs -- is not an element of the violations alleged. Complainant maintains that Respondent has not offered any evidence that contradicts Complainant's specific documentary and testimonial evidence that Church and Alderman, while in Respondent's employ, serviced or repaired MVACs without proper certification in violation of 40 C.F.R. § 82.34 (a) (2). Complainant also argues that Respondent has failed to raise genuine

issues of material fact about the violations alleged in Counts III-V.

Respondent's attack on the character of Church should not be considered, Complainant urges, because Church was not convicted of a crime. It maintains that the statement offered by Respondent about Church is too remote from the actual issues in this case, constitutes self-serving hearsay, is of little probative value and is unduly prejudicial.

Decision on the Motion

Some of the material facts are undisputed in the filings. Respondent owns and operates Valley Chevrolet-Geo Body Shop and the Valley Chevrolet-Geo in Granite Falls, North Carolina (now Valley Chevrolet, Inc. Body Shop and Valley Chevrolet, Inc.) Respondent at its body shop and service facility repairs and services motor vehicle air conditioners for consideration. Section 609 (c) of the Clean Air Act, 42 U.S.C. § 7671h (c) provides that no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving refrigerant without using approved refrigerant recycling equipment and no person may service a vehicle air conditioner unless he or she has been properly trained and certified. Since August 13, 1992, there have been Agency regulations implementing Section 609 (c).

The Complainant has established: that Mack Anthony Church was employed by the Respondent at its body shop as an automotive repair technician during the times relevant to the complaint; that he performed service or repair on MVACs involving refrigerant, for consideration, on three occasions identified in the complaint; and that when he did the service or repairs, he was not a certified technician. While Respondent denies that Church worked on the MVACs in the vehicles cited in the complaint, it has offered no factual support for its claim. The invoices or work orders and estimates supplied by Respondent and Respondent's customers indicate that the MVACs identified in the complaint were repaired or serviced by Respondent. The work orders and the affidavit supplied by Church support that he worked on the vehicles alleged in the complaint.

While respondent's employees, who submitted affidavits, conjecture that the vehicles worked on by Church may not have needed repair or service on their MVACs, they present no firsthand knowledge about the vehicles that conflicts with Church's statement and no explanation about who repaired or serviced the MVACs listed on the invoices if Church did not. The affidavit of Kevin Brice Alderman supports Church's claims. Alderman also worked on MVACs at the body shop even though he was not certified. Again the invoices support Alderman's claims. Respondent concedes that Jimmy McCurry and Dennis Wolfe worked on MVACs at Respondent's body shop and service center when they were not certified as required by the regulations. It admits that Wolfe serviced MVACs on seven different occasions at the body shop involving a total of 16.65 pounds of R-12, a Class I controlled substance under the Clean Air Act. Complainant has specifically identified five MVACs that Alderman and Church repaired or serviced without utilizing approved refrigerant recycling and recovery equipment. Respondent concedes that it did not have approved refrigerant recycling and recovery equipment at the body shop. While Respondent denies that this happened, it has not pointed to facts which rebut Complainant's allegations. Respondent claims that usually the refrigerant escaped from the vehicles during the accident and that when MVACs required service they were sent to another facility or its service center. But, at the same time, Respondent concedes that was not always the case. Respondent does not identify any specific facts about the vehicles cited in the affidavits, invoices and the complaint that would permit applying its general assumptions to those vehicles. There is no representation that the refrigerant in the vehicles listed in the complaint was properly recycled or that the refrigerant had escaped by the time Church and Alderman repaired the vehicles.

Instead of demonstrating that the work listed on the invoices was not performed by Church, Respondent asserts that Church should not be believed for reasons unrelated to his work at Respondent's body shop. Respondent claims that Church told his fellow workers that he had not reported all his income on his tax return and had pocketed cable television hook-up fees when he was a cable installer. Respondent's

argument is not material in the context of this case. First, the only source for Respondent's allegations is Church's co-workers at the body shop, all of whom infer that Church is not to be believed. None of the co-workers, who provided affidavits, offers any explanation about why Church should be believed about these matters and not about his work at the body shop. Respondent has no firsthand knowledge about the incidents alleged. Second, Respondent has not shown that Church performed his job dishonestly while he was in its employ or that he was not knowledgeable about vehicle body repair and environmental regulations applicable to MVACs. Certainly, Church acted responsibly and honestly when he reported violations of 40 C.F.R. § 82.34 (a) (1) and (2) to Complainant. Third, the credibility of Church's allegations are not solely supported by his statements. Alderman, McCurry and Wolfe also admit that they violated the same regulations and Respondent does not claim that they are dishonest.

Respondent's invoices incorporate a system of accounting for employees who did repairs or service on each vehicle brought to its shop, and yet there are no affidavits from any employee who claims to have done the repairs or service on the vehicles cited in the complaint in compliance with 40 C.F.R. § 82.34 (a) (2). Complainant has established that, as alleged in Counts I, II, III and IV of the complaint, Respondent failed to repair or service vehicles by using certified employees thirteen times in violation of 40 C.F.R. § 82.34 (a) (2) . Respondent has also established that Church and Alderman repaired or serviced five vehicles involving MVAC refrigerant without utilizing approved refrigerant recycling or recovery equipment in violation of 40 C.F.R. § 82.34 (a) (1). No genuine issue of material fact remains to be decided about the Counts I, II, III, IV and V of the complaint.

PENALTY

The Complainant has revised the penalty proposed in complaint and seeks the following assessment.

Economic Benefit	$1,274
Gravity Components	
Size of Business	2,500
Count I (uncertified technician)	5,000
Count II (uncertified technician)	5,000
Count III (uncertified technician)	5,000
Count IV (uncertified technician)	5,000
Count V (no recycling equip.)	10,000
No. of Vehicles 12 x $40	480
Subtotal of Gravity Components	32,980
20 percent upward adjustment	6,596
Total Gravity Component	39,576
Total Proposed Penalty	40,850

Complainant used Appendix IX of the Clean Air Act Stationary Source Civil Penalty Policy (General Penalty Policy) (October 25, 1991) 1991 LEXIS 7, C-Exh. 12 and 13. Appendix IX is the Clean Air Act Civil Penalty Policy applicable to persons who perform service for consideration on a motor vehicle air conditioner involving refrigerant (July 19, 1993). The penalty policy takes into account factors drawn from Section 113 (e) of Clean Air Act. Those policy factors include the size of the violator's business, the violator's full compliance history, the economic benefit of noncompliance, and the seriousness of the violation. The penalty policy also provides for reduction of the penalty because of the respondent's showing that the penalty would have an adverse economic impact on its business and any good faith efforts to comply, but these matters must be raised by the respondent.

Complainant's proposed penalty analysis is the sum of the economic benefit from noncompliance and the gravity component. The Complainant computed the economic benefit that Respondent received from not purchasing approved refrigerant recycling equipment for use at the body shop. Respondent operated the body shop from May 1, 1995 to August of 1997, a period of 26 months, without approved refrigerant recycling equipment. Complainant calculated the proposed economic benefit penalty from the matrix chart included in the penalty policy. The calculation considers as

economic benefit only the amount that Respondent saved by not purchasing recycling equipment. It does not include the amount saved by Respondent from failing to train and certify its employees. The matrix penalty calculation is $1,274 in economic benefit to Respondent during the 26 months it was in noncompliance. Respondent has not challenged this calculation.

The gravity component of the penalty assesses two factors about the violation. The violation's importance to the regulatory scheme and its potential for environmental harm (ozone-depleting effect of the violator's actions) are determined. For each uncertified person who services or repairs a MVAC there is a $5,000 penalty. Complainant proposes an assessment of a $20,000 gravity penalty against Respondent because four of Respondent's employees performed service on motor vehicle air conditioners without being certified in violation of 40 C.F.R. § 82.34 (a) (2). Complainant's urges that its assessment is appropriate because it meets both criteria under the gravity component of Appendix IX. It argues that Respondent's failure to have properly trained and certified technicians is both destructive of the regulatory scheme and presents the potential for harm to the environment.

Complainant proposes a gravity penalty assessment for the violation in Count V of $10,000 because Respondent repaired or serviced for consideration motor vehicle air conditioners involving the refrigerant without properly using approved refrigerant recycling or recovery equipment.

The gravity assessment component of the penalty policy also considers whether the Respondent had multiple violations of Section 609 which would significantly increase the potential for environmental harm. The penalty policy assesses $40 against the violator for each motor vehicle air conditioner serviced without proper recycling or recovery equipment. The amount increases if the violator is a repeat offender. Complainant established that Respondent serviced air conditioners in twelve motor vehicles without the proper equipment and because of the twelve vehicles involved in the violation proposes increasing the gravity component by $480.

The gravity component may be increased or decreased in order to scale the penalty to the size or net worth of the violator. Complainant proposes increasing Respondent's penalty by $2,500 which is the amount of increase provided in the penalty policy for an entity Respondent's size. Respondent's sales in 1996 were $18,886,300. Its net worth in 1996, according to Dun & Bradstreet and the accounting figures submitted by Respondent, was $869,316. Complainant points out that Respondent's net profits for each of the past three years exceeds the proposed penalty by more than 400 percent. [(3)]

The penalty policy states that mitigation of the penalty policy amounts should be permitted only if the violator is able to demonstrate an inability to pay the full amount or it asserts other unique factors. The Agency maintains that the amounts assessed should be considered the minimum penalty because the matrix amounts are substantially lower than the amount permitted under the statute. Complainant proposes increasing the penalty by 20 percent because the Respondent was aware or should have been aware of the regulations and repeatedly failed to comply. Complainant supports its determination with the fact that Respondent owned proper recycling equipment and had certified technicians at the service center but it failed to utilize the equipment and certified technicians at the body shop and at times at the service center.

Complainant argues that it is apparent that Respondent knew about its obligations but did not insure that they were met. Adding to the seriousness of the violations is the finding that the body shop foreman, who was not certified, serviced vehicle air conditioning systems. When managers violate the rules, it is not surprising that the people they supervise are not compliant.

The Respondent did not respond to Complainant's penalty analysis or its arguments for assessing the penalty in its opposition to the motion for accelerated decision. Overall, Complainant's consideration of the penalty is reasonable and appropriate. However, Complainant's proposal to increase the gravity and economic components by

20 percent is not justified because the Respondent knew or should have known about the regulations. [4] The penalty policy matrix assumes in calculating the reasonable and appropriate amount that Respondent knew or should have known about the regulations. An increase in the amount assessed by the matrixes and tables requires something more. (Complainant relies on an example at the end of Appendix IX for its calculation of an 20 percent increase. That calculation is without any explanation about what factual circumstances gave rise to the 20 percent increase in the example.) The record, for example, does not show that Respondent's actions were willful or that it was uncooperative in coming into compliance once the violations were brought to its attention by the Complainant. At the same time, Respondent's actions after the fact do not warrant more than elimination of the twenty percent upward adjustments. The just and reasonable penalty in this case for the violation found in Counts I-V is $34,254.

ACCORDINGLY, IT IS ORDERED that Complainant's motion for accelerated decision IS GRANTED.

IT IS FURTHER FOUND that no genuine issue of material fact exists about Counts I, II, III, IV and V of the complaint and that Respondent has violated 40 C.F.R. § 82.34 (a) (1) and (2) as alleged in Counts I, II, III, IV and V of the complaint.

IT IS FURTHER ORDERED that Respondent is assessed a penalty of $34,254 for violations of 40 C.F.R. § 82.34 (a) (1) and (2) and Section 609 of the Clean Air Act.

Payment of the full amount of the civil penalty assessed must be made within sixty (60) days of the service date of the final order by submitting a certified check or cashier's check payable to Treasurer, United States of America, and mailed to:

U. S. EPA, Region IV
(Regional Hearing Clerk)
Nations Bank
P.O. Box 100142
Atlanta, Georgia 30384

A transmittal letter identifying the subject case and the EPA docket number, plus respondent's name and address must accompany the check.

Failure by respondent to pay the penalty within the prescribed statutory time frame after entry of the final order may result in the assessment of interest on the civil penalty. 31 U.S.C. § 3717; 4 C.F.R. § 102.13.

Pursuant to 40 C.F.R. § 22.27 (c), this initial decision will become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties and without further proceeding unless (1) an appeal to the Environmental Appeals Board is taken from it by a party to this proceeding or (2) the Environmental Appeals Board elects, sua sponte, to review this initial decision. If an appeal is taken, it must comply with § 22.30. A notice of appeal and an accompanying brief must be filed with the Environmental Appeals Board and all other parties within twenty (20) days after this decision is served upon the parties.

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Edward J. Kuhlmann
Administrative Law Judge

June 30, 1998
Washington, D. C.

1. The Complainant is represented by Leif Palmer, Esq. and the Respondent is represented by Bruce W. Vanderbloemen, Esq.

2. Pursuant to 114 (a) of the Clean Air Act, 42 U.S.C. § 7414 (a), the Administrator

of EPA is authorized to require any person who owns or operates any emission source, or who is subject to any requirement of the Clean Air Act, to establish and maintain such records, make such reports, and provide such other information as she may reasonably require, for the purpose of determining whether such person is in violation of any provision of the Clean Air Act.

3. Complainant states that Respondent argued in its prehearing exchange but not in its opposition to the motion for accelerated decision that the net worth and profitability of its body shop should be considered as a separate entity when determining the impact of the penalty. Complainant points out that the penalty policy combines all facilities of a respondent when determining its size. Complainant argues that the application of that policy is appropriate in this case because the body shop is not a separate entity and is beneficial to Respondent's sales and service center where most of the profits are derived. In any event, Complainant points out, the violations also occurred at the service center.

4. Uncontested evidence indicates that Respondent actually knew about some of the regulations. There is also evidence that Respondent's managers knew about and violated the regulations.