

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
)
) Docket No. CAA-2025-8463
)
Phoenix Fire Systems, LLC d/b/a Basic Fire)
Protection)
)
)
)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought for alleged violations of the American Innovation and Manufacturing Act of 2020 (“AIM Act”), 42 U.S.C. § 7675, which governs the import of bulk hydrofluorocarbons (HFCs), under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), which authorizes the EPA to bring administrative civil enforcement actions.
2. HFCs are potent greenhouse gases that accelerate climate change. The United States has committed, as a signatory of the Kigali Amendment to the Montreal Protocol, to reduce its production and consumption of HFCs by 85% in a stepwise manner by the year 2036.
3. Complainant is Mary E. Greene, Director, Air Enforcement Division, of the United States Environmental Protection Agency.
4. Respondent is Phoenix Fire Systems, LLC d/b/a Basic Fire Protection (“Phoenix Fire”), an Illinois corporation headquartered in Frankfort, Illinois. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent (together, the “Parties”), having agreed that settlement of this action is in the public interest, consent to the issuance of the attached final order

(“Final Order” or “Order”) ratifying this Consent Agreement (“Consent Agreement” or “Agreement”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement and Final Order.

B. JURISDICTION

6. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.
7. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).
8. The Environmental Appeals Board is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).
9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. This proceeding arises under the AIM Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder, which impose limits on HFC production and consumption.
11. The EPA is authorized to enforce the AIM Act and any regulation promulgated thereunder pursuant to the federal enforcement authorities established by Section 113 of the CAA, 42 U.S.C. § 7413, as though the AIM Act was expressly included in Title VI of

the CAA. 42 U.S.C. § 7675(k)(1)(C).

12. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
13. The regulations at 40 C.F.R. Part 84, Subpart A, apply to anyone who imports a regulated substance. 40 C.F.R. § 84.1(b).
14. The regulations at 40 C.F.R. Part 84, Subpart A, contain the following definitions:
 - (a) An “application-specific allowance” is “a limited authorization granted in accordance with subsection (e)(4)(B)(iv) of the AIM Act for the production or import of a regulated substance for use in the specifically identified applications that are listed in that subsection and in accordance with the restrictions contained at § 84.5(c).” 40 C.F.R. § 84.3.
 - (b) “Bulk” is defined as: “[A] regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.” 40 C.F.R. § 84.3.
 - (c) “Consumption allowances” are “a limited authorization to produce and import regulated substances; however, consumption allowances may be used to produce regulated substances only in conjunction with production allowances.” 40 C.F.R. § 84.3.
 - (d) “Exchange value equivalent” (“EVE”) is defined as “the exchange value-weighted

amount of a regulated substance obtained by multiplying the mass of a regulated substance by the exchange value of that substance.” 40 C.F.R. § 84.3.

- (e) “Import” is defined as “to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.” 40 C.F.R. § 84.3.

- (f) “Importer” is defined as: “[A]ny person who imports a regulated substance into the United States. ‘Importer’ includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred.” 40 C.F.R. § 84.3.

- (g) “Person” is defined as “any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.” 40 C.F.R. § 84.3.

- (h) “Regulated substance” is defined as: “[A] hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3).” 40 C.F.R. § 84.3.

15. From January 1, 2022, to September 17, 2023, 40 C.F.R. § 84.5(b)(1) (2022) provided that “[n]o person may import bulk regulated substances, except by expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported.”¹
16. A current list of regulated substances, their chemical formulas, and their exchange values can be found in Appendix A to 40 C.F.R. Part 84. *See* 40 C.F.R. § 84.3.
17. The compound HFC-23 is regulated by the AIM Act and has an exchange value of 14,800. 40 C.F.R. Part 84, Appendix A.
18. “Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).”² 40 C.F.R. § 84.5(b)(2) (2022).
19. “Every kilogram of bulk regulated substances imported ... constitutes a separate violation of this subpart.” 40 C.F.R. § 84.5(b)(6) (2022).³
20. Sections 113(a)(3)(A) and 113(d)(1) of the CAA, 42 U.S.C. § 7413(a)(3)(A) 7413(d)(1), authorizes the Administrator of the EPA to assess a civil administrative penalty of not

¹ Effective September 18, 2023, 40 C.F.R. § 84.5(b)(1) was revised to: “[n]o person may import bulk regulated substances, either as a single component or a multicomponent substance, except . . . [i]f the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend.”

² Effective September 18, 2023, this provision was edited to be found under 40 C.F.R. § 84.5(b)(3) and now states, “Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in paragraph (b)(1)(i) or (v) of this section or another party who meets the definition of an importer met one of the exceptions set forth in paragraph paragraphs (b)(1)(ii) through (iv) of this section.”)”

³ Effective September 18, 2023, this provision was edited to be found under 40 C.F.R. § 84.5(b)(7).

more than \$25,000 per day of violation of Title VI of the CAA, or regulations promulgated thereunder. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil administrative penalty has subsequently been raised to \$57,617 per day of violation. 40 C.F.R. § 19.4, Table 1.

D. STIPULATED FACTS

21. Phoenix Fire owns and operates a facility that provides sells fire protection systems and provides fire protection system contract work and is incorporated under the laws of the State of Illinois. Respondent has its headquarters in Frankfort, Illinois.
22. On or about October 4, 2022, Phoenix Fire was the consignee for an import shipment, which included approximately 186.4 kg of HFC-23, from Canada under Customs Entry Number MK8-57482162 (“Subject HFCs”).
23. The importer of record, Ward’s Hydraulic Services, LTD, located at 224 Cayer St #1, Coquitlam, British Columbia V3K 5B1, Canada, did not possess or expend any consumption or application-specific allowances, nor did it receive a non-objection notice from the EPA for the Subject HFCs.
24. Respondent did not possess or expend any allowances when importing the Subject HFCs, nor did it receive a non-objection notice from the EPA for the Subject HFCs.
25. Using the formula provided by 40 C.F.R. § 84.3, the metric tons of exchange value equivalent (“MTEVe”) of regulated substances are calculated by multiplying the mass of the regulated substance in kg by the exchange value of the regulated substance and dividing the product by 1,000. Under this formula, 186.4 kg of HFC-23 is equivalent to

about 2,758.7 MTEVe.

26. The Subject HFCs were transported in five cylinders.
27. Respondent is a “person,” as that term is defined in 40 C.F.R. § 84.3.
28. As consignee for the import of the Subject HFCs, Phoenix Fire was an “importer” of the Subject HFCs within the meaning of 40 C.F.R. § 84.3.
29. The Subject HFCs are bulk regulated substances as defined above at 40 C.F.R. § 84.3.
30. On or about October 27, 2022, the EPA issued a denial recommendation letter to U.S. Customs and Border Protection for the Subject HFCs, and the Subject HFCs were re-exported on or about November 8, 2022.

31. ALLEGED VIOLATIONS OF LAW

32. Pursuant to 40 C.F.R. § 84.5(b)(6) (2022), every kilogram of the Subject HFCs imported on October 4, 2022 constitutes a separate violation of 40 C.F.R. § 84.5(b) (2022).
33. The Subject HFCs imported by Respondent on October 4, 2022 are approximately 186.4 kg, which constitutes 186 violations of 40 C.F.R. § 84.5(b)(1) (2022).

E. TERMS OF CONSENT AGREEMENT

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- (b) admits to the stipulated facts stated in Section D of this Consent Agreement;
- (c) neither admits nor denies the violations alleged in Section E of this Consent Agreement;
- (d) consents to the assessment of a civil penalty as stated below;

- (e) waives any right to contest the alleged violations of law; and
 - (f) waives its rights to appeal the Final Order accompanying this Consent Agreement.
35. For the purpose of this proceeding, Respondent:
- (a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions related to the Respondent;
 - (c) 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 Consent Agreement and Final Order, and its right to appeal this Consent Agreement and Final Order;
 - (d) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying this Consent Agreement;
 - (e) consents to personal jurisdiction in any action to enforce this Consent Agreement or Order, or both in the United States District Court for the District of Columbia; and
 - (f) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for noncompliance with the Consent Agreement or Final Order, and agrees that federal law shall govern in any such civil action.

- (g) acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information.
 - (h) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Consent Agreement (see 31 U.S.C. § 7701);
 - (i) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (j) acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).
36. Civil Penalty. The civil penalty agreed upon by the Parties for settlement purposes is \$5,430 (the “Assessed Penalty”).
37. Penalty Payment. Respondent agrees to pay the Assessed Penalty to the United States in the manner specified below:
- (a) pay the Assessed Penalty within 30 calendar days of the Effective Date of this Agreement.
 - (b) pay the Assessed Penalty using any method, or combination of methods, provided on the following website <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>.
 - (c) identify each and every payment with Docket No. CAA-2025-8643; and
 - (d) within 24 hours of payment of the EPA Penalty, email proof of payment to Hallie Lipsey at lipsey.hallie@epa.gov. “Proof of payment” means, as applicable, a copy

of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with Docket No. CAA-2025-8463.

38. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following four paragraphs of this Consent Agreement, Respondent must timely pay the penalty.
39. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7524(c)(6), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

- (a) Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- (b) Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

(c) Late Payment Penalty. A 10% quarterly non-payment penalty.

40. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement and attached Final Order, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following:

(a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R.

§§ 13.13 and 13.14;

(b) Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

(c) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

(d) Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7524(c)(6). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

41. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to

late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

42. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement and attached Final Order shall not be deductible for purposes of federal taxes.
43. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
44. By signing this Agreement, Respondent agrees to acceptance of the Complainant's:
(a) digital or an original signature on this Agreement; and (b) service of the fully executed Agreement on the Respondent by mail or electronically by e-mail.
Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.
45. Except as specified by paragraph 40(b), each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

46. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section E of this Consent Agreement.
47. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or

otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

48. This Consent Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings among the Parties with respect to the subject matter hereof.
49. This Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement.
50. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
51. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

52. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

G. EFFECTIVE DATE

53. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order ratifying the Agreement. The effective date of the Agreement shall be the date of issuance of the Final Order. The EPA will transmit a copy of the Final Order and ratified Consent Agreement to the Respondent.

The foregoing Consent Agreement In the Matter of Phoenix Fire Systems, LLC d/b/a Basic Fire Protection, Docket No. CAA-2025-8463, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature

1/15/25
Date

Printed Name: Kirk W. Hummerich

Title: General Manager

Address: Phoenix Fire Systems LLC
744 NEBRASKA ST., FRANKFORD, IL 60423

Federal Tax Identification Number: 36-4147529

The foregoing Consent Agreement In the Matter of Phoenix Fire Systems, LLC d/b/a Basic Fire Protection, Docket No. CAA-2025-8463, is Hereby Stipulated, Agreed, and Approved.

COMPLAINANT:

MARY
GREENE

Digitally signed by MARY
GREENE
Date: 2025.01.15
14:31:56 -05'00'

Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Phoenix Fire Systems, LLC, d/b/a Basic Fire Protection, Docket No. CAA-2025-8463, were sent to the following persons in the manner indicated:

By E-mail:

Hallie Lipsey, Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
e-mail: lipsey.hallie@epa.gov

Kirk Humbrecht
Phoenix Fire Systems, LLC, d/b/a Basic Fire Protection
744 Nebraska Street
Frankfort, IL 60423-1701
e-mail: khumbrecht@phoenixfire.com

Dated: Feb 05, 2025

Tommie Madison

Tommie Madison
Clerk of the Board