



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

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In re Little Leaf Farms, LLC) Docket No. CAA-HQ-2024-008451
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FINAL ORDER


Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Expedited Settlement Agreement/Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Expedited Settlement Agreement/Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: April 15, 2024



Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Wendy L. Blake, Mary Kay Lynch, and Ammie Roseman-Orr.

8. The EPA regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
9. 40 C.F.R. § 84.5(b)(1) states that “no 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.”
10. 40 C.F.R. § 84.5(b)(6) states that “every kilogram of bulk regulated substances imported ... constitutes a separate violation of this subpart.”

C. ALLEGED VIOLATION OF LAW

11. The EPA alleges Respondent violated 40 C.F.R. § 84.5(b) by importing the bulk regulated substances identified in Table 1 of ESA Attachment 1 without expending consumption or application-specific allowances in a quantity equal to the exchange value equivalent of the regulated substances imported.

D. TERMS OF AGREEMENT

12. 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 Agreement;
 - b. admits the facts stipulated in Table 1 of ESA Attachment 1;
 - c. consents to the assessment of a civil penalty as stated in Table 3 of ESA Attachment 1 and below;
 - d. waives any right to contest the alleged violations of law set forth in Section C of this Agreement; and
 - e. waives its right to appeal the Order accompanying this Agreement.
13. For the purpose of this proceeding, Respondent:
 - a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions related to the Respondent;
 - c. certifies that it completed the corrective action as set forth in Table 4 of ESA Attachment 1;
 - d. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - e. consents to personal jurisdiction in any action to enforce this 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 for the District of Columbia to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for noncompliance with the Agreement or Order, and agrees that federal law shall govern in any such civil action.

14. Penalty Payment. The civil penalty agreed upon by the Parties for settlement purposes is stated in Table 3 of ESA Attachment 1. Respondent agrees to:

- a. pay the penalty within 30 calendar days of the Effective Date of this Agreement;
- b. pay the penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>;
- c. identify each and every payment with the Docket No. of this Agreement and Final Order; and
- d. within 24 hours of payment of the penalty, send proof of payment via electronic mail to the Inspector at the Inspector's email address identified in Table 1 of ESA Attachment 1. "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 the docket number.

15. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in the United States District Court for the District of Columbia to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2), the United States' enforcement expenses, and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d. (1) suspend or revoke Respondent's licenses or other privileges, or (2) 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.

16. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are

significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

17. By signing this Agreement, Respondent acknowledges that this Agreement and Order, including identifying information such as name, federal tax ID number, mailing and e-mail address, will be available to the public when the Agreement and Certificate of Service are filed and uploaded to a searchable database and agrees that this Agreement does not contain any confidential business information or other personally identifiable information.
18. 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.
19. 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.
20. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

E. EFFECT OF AGREEMENT AND ATTACHED FINAL ORDER

21. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations identified in Section C of this Agreement.
22. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
23. This 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.
24. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended after it is ratified except upon the written agreement of both parties, and approval of the Environmental Appeals Board.
25. Any violation of this Order may result in a civil judicial action for an injunction, or civil penalties of up to \$121,275 per day per violation (with each kilogram a separate violation), or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

26. 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.
27. 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.
28. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this 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.

F. EFFECTIVE DATE

29. 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 Agreement to the Respondent.

ESA ATTACHMENT 1

**AMERICAN INNOVATION AND MANUFACTURING (“AIM”) ACT
OFFSITE COMPLIANCE MONITORING ACTIVITY OR INSPECTION FACTS,
ALLEGED VIOLATIONS, PENALTY, AND CORRECTIVE ACTION FORM**

Table 1 – Offsite Compliance Monitoring Activity or Inspection Stipulated Facts	
Offsite Compliance Monitoring Activity or Inspection Date(s):	Docket Number:
10/27/2022	CAA-HQ-2024-008451
Offsite Compliance Monitoring Activity or Inspection Location:	Entry/Shipment Number(s):
New York/ Newark	16313975610
Person/Importer¹ Name (“Respondent”) and Importer Number:	Inspector(s) Name(s) and Email Address:
Little Leaf Farms, LLC, <u>47-439351200</u>	Amelie Isin isin.amelie@epa.gov
Respondent Address:	Date of Detention or Hold:
18 E. Kline Rd. McAdoo, PA 18237	10/4/2022
Value of Goods:	Arrival Date:
\$8,570	9/25/2022
Subject HFCs² and Mass (in kg):	MTEVe³:
XP40/R-449A (742 kg total, 14 cylinder(s) at approx. 53 kg each), containing HFC-134a (25.7% or 190.7kg), HFC-32 (24.3% or 180.3kg), and HFC-125 (24.7% or 183.3kg) ⁴	1,036
Did the importer have and expend allowances equal to the imported HFCs?	Container and Quantity:
No	14 cylinders, 53 kg each
Did the importer receive any non-objection notices from the EPA?	The EPA Delegated Official:
No	Mary E. Greene

¹ “Person” and “Importer” are defined in 40 C.F.R. § 84.3.

² “Subject HFCs” are Bulk Regulated Substances, subject to 40 C.F.R. § 84.5. “Bulk” and “Regulated Substance” are defined in 40 C.F.R. § 84.3.

³ The EPA calculates metric tons of EVe (“MTEVe”) by multiplying X kg (the mass of the regulated substance) by Y (the exchange value (EV) of the bulk regulated substance, as reflected in Appendix A of 40 C.F.R. Part 84), and dividing the product by 1,000 to obtain metric tons. The formula for calculating the EV of an HFC blend is set forth in footnote 5.

⁴ Also contains 25.3% or 187.7kg of HFO-1234yf, which is not regulated under the AIM Act.

Table 2 – Description of Alleged Violation

Based on the facts in Table 1, the EPA alleges that the Subject HFCs are bulk regulated substances that were imported without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, a violation of the HFC Allocation regulations at 40 C.F.R. § 84.5(b).

Table 3 – Civil Penalty⁵

\$857, where

$$\mathbf{\$8,570 * 10\% = \$857}$$

Monetary Value of Goods * Percentage Multiplier = Penalty, where

EV⁶	Percentage Multiplier	HFC	EV
< 1,400	10%	HFC-152	53
≥ 1,400 ≤ 5,000	20%	HFC-41	92
> 5,000	30%	HFC-152a	124
≤14,800		HFC-143	353
		HFC-32	675
		HFC-245ca	693
		HFC-365mfc	794
		HFC-245fa	1,030
		HFC-134a	1,100
		HFC-236cb	1,340
		HFC-236ea	1,370
		HFC-134a	1,430
		HFC-43-10mee	1,640
		HFC-227ea	3,220
		HFC-125	3,500
		HFC-143a	4,470
		HFC-236fa	9,810
		HFC-23	14,800

⁵ To determine the EV of a HFC blend, calculate the contribution of each HFC to the total EV of the blend and calculate a case-specific EV multiplier by: multiplying the percentage of the blend made up of each HFC by its EV and summing the resulting blend constituent products to calculate the blend EV. For example, if the percentages of the blend and the EVs (in parentheses) of the constituents are: 55 percent HFC-32 (675), 16 percent HFC-125 (3,500), and 29 percent HFC-134a (1,430), the EV would be $(0.55 \times 675) + (0.16 \times 3,500) + (0.29 \times 1,430) = 1345.95$ EV. Where the exact amount or percentage of each HFC in a blend is unknown, the case team shall use the highest EV associated with a HFC in the blend as a multiplier to calculate the penalty.

⁶ EVs are found in Appendix A of 40 C.F.R. Part 84.

Table 4 – Corrective Action

Respondent certifies that it has:

- exported the Subject HFCs to [VB Greenhouses Galgeweg 55 2671 MT Naaldwijk The Netherlands] [name and address (including country) of the recipient of the exports], a country other than Canada or Mexico (unless the point of entry to the U.S. for the Subject HFCs was through Canada or Mexico) *and*
- paid \$[42,036.87] to perform the above action to address the Subject HFCs, and enclosed a record documenting such payment.

Respondent must check the boxes, fill in all relevant blanks, and return any enclosures and this Attachment 1 with the signed Agreement.

The foregoing Agreement In the Matter of Little Leaf Farms, LLC, Docket No. CAA-HQ-2024-008451, is Hereby Stipulated, Agreed, and Approved.

FOR COMPLAINANT:

MARY GREENE Digitally signed by MARY GREENE
Date: 2024.03.15 17:36:15 -04'00'

Signature

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

FOR RESPONDENT:

Terence Kelley Digitally signed by Terence Kelley
Date: 2024.03.27 11:48:00 -04'00'

03/27/2024

Signature

Date

Printed Name: **Terence Kelley**

Title: **Director of Logistics**

Address: **PO Box 2069 Devens MA 01434**

Federal Tax Identification Number: **47-4393512**

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Expedited Settlement Agreement/Consent Agreement” and “Final Order,” in the matter of Little Leaf Farms, LLC, Docket No. CAA-HQ-2024-008451, were sent to the following persons in the manner indicated:

By E-mail:

Tahani Rivers, Attorney Advisor
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
e-mail: Rivers.Tahani@epa.gov

Terence Kelley
Logistics Director
Little Leaf Farms
105 Walker Road
Shirley, MA 01464-2901
e-mail: terence.kelley@littleleaffarms.com

Dated: Apr 15, 2024



Emilio Cortes
Clerk of the Board