



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2009 AUG 27 PM 1:12

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2009-0024

IN THE MATTER OF:	)	
	)	
<b>GREAT LAKES WHOLESALE AND</b>	)	
<b>MARKETING, LLC.</b>	)	<b>FINAL ORDER</b>
3729 Patterson Ave., S.E.	)	
Grand Rapids, MI 49512-4024	)	
	)	
<b>RESPONDENT</b>	)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 27<sup>th</sup> DAY OF August, 2009.



\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
Great Lakes Wholesale & Marketing, LLC )  
3729 Patterson Ave., S.E. )  
Grand Rapids, MI 49512-4024 )  
 )  
Respondent )  
\_\_\_\_\_ )

FILED  
EPA REGION VIII  
HEARING CLERK

**CONSOLIDATED COMPLAINT AND  
CONSENT AGREEMENT**

**DOCKET NO.: CAA\_08-2009-0024**

**COMPLAINT**

This civil administrative enforcement action is issued pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for violation of the implementing regulations associated with the “Stratospheric Ozone Protection” requirements of Subchapter VI, Section 610, 42 U.S.C. § 7671i. This proceeding is subject to EPA’s “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*” (Rules of Practice), 40 Code of Federal Regulations (C.F.R.) Part 22, and this COMPLAINT AND CONSENT AGREEMENT is authorized by the rules. 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.

**STATUTORY AND REGULATORY FRAMEWORK**

1. The regulations promulgated by EPA pursuant to authority under the CAA, implementing the “Stratospheric Ozone Protection” requirements, are set forth in Part 82, of Title 40 of the Code of Federal Regulations.
2. Pursuant to 42 U.S.C. § 7671j(d) and 40 C.F.R. § 82.64(d), effective January 1, 1994, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in § 82.70(a) or § 82.70(c).

3. Pursuant to 40 C.F.R. § 82.70(a), any aerosol product or other pressurized dispenser which contains a class II substance is a nonessential product, except for certain uses that do not include party string products.

4. Pursuant to 40 C.F.R. § 82.70(c), any plastic foam product which contains a class II substance is a nonessential product, except for certain uses that do not include party string products.

5. Pursuant to 40 C.F.R. § 82.82(b), a class II substance means any substance designated as class II by EPA pursuant to 42 U.S.C. § 7671(a), including but not limited to hydrochlorofluorocarbons. R-22 is a hydrochlorofluorocarbon and therefore is a class II substance.

6. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term “person” includes, in relevant part, “an individual, corporation, or partnership.” Respondent is a “person” as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.

#### FINDINGS OF VIOLATION

7. On March 31, 2008, EPA sent a Request for Information to Respondent requesting information and documentation related to the sale and distribution of any Party String Products that contained Ozone Depleting Substances (ODS). In its response, Respondent indicated that between approximately May 3, 2005, and April 19, 2007, it purchased 178,944 cans of “crazy string” (hereinafter “Party String Products”) containing R-22, a Class II substance, from Chicago Import, Inc., and sold the cans to various companies located within the United States.

8. Respondent’s distribution and sale of the Party String Products containing a class II substance was a violation of the “Stratospheric Ozone Protection” requirements of Subchapter VI, Section 610 of the CAA, 42 U.S.C. § 7671(i), and the regulations found at 40 C.F.R. Part 82.

## CONSENT AGREEMENT

9. Respondent admits the jurisdictional allegations and the factual allegations stated above.

10. Respondent waives his/her right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

11. This Complaint and Consent Agreement, upon incorporation into a Final Consent Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

12. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, section 610 of the CAA, 42 U.S.C. § 7671i. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, 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 (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

13. Based on the factors listed in paragraph 12, and Respondent's acknowledgement that it is in full compliance with the requirements of the CAA, and Respondent's agreement to perform a Supplemental Environmental Project (SEP), EPA has determined that an appropriate civil penalty to settle this action is **One Thousand Six Hundred Thirty-Eight Dollars (\$1,638)**.

14. Respondent consents, for the purpose of settlement, to the issuance of a final consent order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph as follows:

- a. Payment is to be made of **ONE THOUSAND SIX HUNDRED AND THIRTY-EIGHT DOLLARS (\$1,638)** due within 90 calendar days from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004

Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact Natalie Pearson  
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22-checking  
Environmental Protection Agency  
Account 310006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter sfo1.1 in the search field  
Open form and complete required fields

**A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:**

Matt Dehart, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Tina Artemis, 8RC  
Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 91st day from the date of the final consent order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 181st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

- 15. Description of the SEP:
  - a. Respondent shall perform a SEP that involves an independent evaluation of respondent's compliance status with environmental requirements.
  - b. Respondent's SEP shall include an independent review of processes and operations designed to identify banned substances entering and leaving the facility. The review may also address additional environmental concerns, including but not limited to; energy conservation, waste reduction, and pollution prevention.
  - c. Respondent shall (through the use of a Contractor) destroy all cans of ODS-containing Party String Products in its possession by a process of thermal incineration at the Contractor's incineration facility, which to the best of its knowledge thoroughly destroys the ODS within the cans of Party String Products.

- d. Respondent shall complete the work on the SEP no later than March 31, 2010, unless the parties agree in writing to an extension of the completion date.

The total expenditure for the SEP shall not be less than Four Thousand Eight Hundred and Sixty Two Dollars (\$4,862). Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report

16. SEP Reports:

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the SEP. The SEP Completion Report shall contain the following information:
  - (i) A detailed description of the SEP as implemented;
  - (ii) A description of any operating, implementing, or performance problems encountered and the solutions thereto;
  - (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
  - (iv) Certification that the SEP has been fully implemented, pursuant to the provisions of this Consent Agreement.

17. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Complaint and Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

18. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Complaint and Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

19. EPA acceptance of SEP Reports.

- a. Following receipt of the SEP Completion Report described above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in

which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.

- b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Complaint and Consent Agreement.
- c. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

20. Respondent shall submit by first class mail all notices and reports required by this Complaint and Consent Agreement to:

Matt Dehart, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

#### STIPULATED PENALTIES AND LATE FEES

21. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of Four Thousand Eight Hundred Dollars (\$4,800).
- b. If the SEP has been satisfactorily completed, and Respondent spends less than the amount of money required to be spent for the project, Respondent shall pay Four Thousand Eight Hundred Dollars (\$4,800.00,) less the EPA-approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
- c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day

after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

22. Stipulated penalties for subparagraph 21(c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

23. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the Paragraph 14.

#### GENERAL PROVISIONS

24. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.

25. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

26. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.

27. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.

28. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

29. Each party shall bear its own costs and attorney fees in connection with this matter.

30. This Complaint and Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Office of Enforcement, Compliance, and  
Environmental Justice,

Complainant.

Date: 6/24/09

By: Eddie A. Sierra  
Eddie Sierra,  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

GREAT LAKES WHOLESALE & MARKETING, LLC

Respondent.

Date: 6-11-9

By: Kyle Tribbett  
Printed Name: Kyle Tribbett  
Title: Treasurer

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter of **GREAT LAKES WHOLESALE & MARKETING, LLC.; DOCKET NO.: CAA-08-2009-0024** was filed with the Regional Hearing Clerk on August 27, 2009.

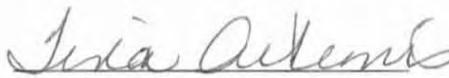
Further, the undersigned certifies that a true and correct copy of the documents were delivered David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 27, 2009, to:

Gary MacDougal  
Great Lakes Wholesale & Marketing, LLC.  
3729 Patterson Avenue, S.E.  
Grand Rapids, MI 49512-4024

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

August 27, 2009

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

