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U.S. EPA, REGION 9
REGIONAL HEARING CLERK

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION 9
3 BEFORE THE ADMINISTRATOR

| | | | |
|------------------------------|---|-----------------------------|-----------------|
| |) | | |
| In the Matter of: |) | Docket No. | CAA-9-2007-0027 |
| |) | | |
| Sunnyvale Ford, Inc. |) | CONSENT AGREEMENT AND FINAL | |
| 650 E. El Camino Real |) | ORDER PURSUANT TO 40 C.F.R. | |
| Sunnyvale, California 94087 |) | §§ 22.13 and 22.18 | |
| |) | | |
| Proceeding under Section 113 |) | | |
| of the Clean Air Act, |) | | |
| 42 U.S.C. § 7413 |) | | |
| |) | | |

11 CONSENT AGREEMENT

12 I. JURISDICTION AND AUTHORITY

- 13 1. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C.
14 §§ 7401-7671q ("CAA" or "Act") and 40 Code of Federal
15 Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b) of the
16 Consolidated Rules of Practice Governing the Administrative
17 Assessment of Civil Penalties, the Director of the Air
18 Division ("Complainant"), U.S. Environmental Protection
19 Agency ("EPA"), Region 9, is simultaneously commencing and
20 concluding this proceeding against Sunnyvale Ford, Inc.
21 ("Sunnyvale" or "Respondent") through the filing of this
22 Consent Agreement and Final Order Pursuant to 40 C.F.R.
23 §§ 22.13 and 22.18 ("CAFO").
- 25 2. Complainant has been duly delegated the authority to file
26 this action and sign a consent agreement settling this
27 action.
28

1 *In the Matter of: Sunnyvale Ford, Inc.*

2 3. Section 113(d) (1) of the Act limits EPA's authority to issue
3 administrative complaints to matters where the total penalty
4 sought does not exceed \$270,000,¹ and the first alleged date
5 of violation occurred no more than 12 months prior to the
6 initiation of the action, unless EPA and the Attorney General
7 for the U.S. Department of Justice ("DOJ") jointly determine
8 that a matter involving a larger penalty or longer period of
9 violation is appropriate for administrative action. Because
10 this CAFO contains alleged violations that occurred more than
11 12 months ago, Complainant has obtained the required joint
12 determination from EPA Headquarters and DOJ.

14 4. This CAFO notifies Respondent of Complainant's determination
15 that Respondent has violated Section 609 of the CAA and 40
16 C.F.R. § 82.34(a) (2).

17 **II. STATUTORY AND REGULATORY AUTHORITY**

18 5. The Stratospheric Ozone Protection provisions of Section 609
19 of the Act, 42 U.S.C. § 7671h, authorize EPA to promulgate
20 standards and requirements regarding the servicing of a motor
21 vehicle air conditioner ("MVAC").

22 6. Pursuant to Section 609 of the Act, EPA promulgated
23 regulations, set forth at 40 C.F.R. Part 82, Subpart B, that
24

25 _____
26 ¹As adjusted for inflation under the Debt Collection
27 Improvement Act and implementing regulations at 40 C.F.R. Part
28 19.

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2 apply to any person performing service on a motor vehicle for
3 consideration when this service involves the refrigerant in
4 the MVAC. 40 C.F.R. § 82.30(b); 57 *Fed. Reg.* 31261 (July 14,
5 1992). "Refrigerant" is defined as any class I or class II
6 substance, listed at 40 C.F.R. Part 82, Subpart A, Appendix
7 A, that is used in an MVAC. See 40 C.F.R. § 82.32(f).

8
9 7. Pursuant to 40 C.F.R. § 82.34(a)(2), no person that is
10 repairing or servicing MVACs for consideration may perform
11 any service involving the refrigerant for the MVAC, unless
12 such person has been properly trained and certified by a
13 technician certification program approved by EPA under 40
14 C.F.R. § 82.40.

15 8. "Service involving refrigerant" is defined as any service
16 during which discharge or release of refrigerant from the
17 MVAC to the atmosphere can reasonably be expected to occur.
18 Service involving refrigerant includes any service in which
19 an MVAC is charged with refrigerant but no other service
20 involving refrigerant is performed (*i.e.*, a "top-off"). 40
21 C.F.R. § 82.32(h).
22

23 **III. GENERAL ALLEGATIONS**

24 9. At all times relevant to this CAFO, Respondent was a
25 corporation incorporated under the laws of California, and a
26 "person" within the meaning of 40 C.F.R. § 82.3.
27

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2 10. At all times relevant to this CAFO, Sunnyvale owned and
3 operated a Ford dealership located at 650 E. El Camino Real,
4 Sunnyvale, California, where, among other things, Sunnyvale
5 performed service on motor vehicles for consideration when
6 such service involved the refrigerant in MVACs.

7 11. At all times relevant to this CAFO, Sunnyvale employed
8 "person[s]," within the meaning of 40 C.F.R. § 82.3, who
9 repaired and/or serviced MVACs for consideration ("MVAC
10 technicians").

11 12. At all times relevant to this CAFO, Sunnyvale employed MVAC
12 technicians who performed "service involving the
13 refrigerant," within the meaning of 40 C.F.R. § 82.32(h), on
14 MVACs.
15

16 **IV. SPECIFIC ALLEGATIONS**

17 13. Complainant incorporates by reference the allegations
18 contained in Paragraphs 1 through 12 of this CAFO.

19 14. From January 4, 2003 to February 23, 2006, Sunnyvale
20 employed sixteen (16) MVAC technicians who, when performing
21 service involving the refrigerant for MVACs, were not
22 properly trained and certified by a technician certification
23 program approved by EPA under 40 C.F.R. § 82.40.

24 15. The failures of sixteen (16) MVAC technicians, employed by
25 Sunnyvale, to be properly trained and certified, from
26

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2 January 4, 2003 to February 23, 2006, by a technician
3 certification program approved by EPA under 40 C.F.R. § 82.40
4 when performing service involving the refrigerant for MVACs,
5 constitute sixteen (16) violations of Section 609 of the CAA
6 and 40 C.F.R. § 82.34(a)(2).

7
8 **V. RESPONDENT'S ADMISSIONS**

9 16. Without trial or litigation of the issues or any
10 adjudication of the facts set forth in this CAFO, Respondent
11 (i) admits that EPA has jurisdiction over the subject matter
12 of this CAFO and over Respondent; (ii) admits the general
13 allegations contained in Section III of this CAFO; (iii)
14 neither admits nor denies the specific allegations contained
15 in Section IV of this CAFO; (iv) consents to the terms of
16 this CAFO, including the assessment of the civil
17 administrative penalty under Section VI of this CAFO; (v)
18 waives any right to contest the allegations in this CAFO;
19 and (vi) waives the right to appeal the proposed final order
20 contained in this CAFO.
21

22 **VI. PENALTY ASSESSMENT**

23 17. In settlement of the violations and facts specifically
24 alleged in Section IV of this CAFO, and in consideration of
25 the statutory penalty factors set forth in Section 113(e)(1)
26 of the CAA, embodied in EPA's Clean Air Act Stationary
27
28

1 In the Matter of: Sunnyvale Ford, Inc.

2 Source Civil Penalty Policy ("Penalty Policy"), dated
3 October 25, 1991, and Appendix IX thereto, dated July 19,
4 1993, Respondent shall pay a civil administrative penalty of
5 thirty-seven thousand seven hundred dollars (\$37,700) within
6 30 calendar days after the effective date of this CAFO.

7 Payment shall be made by electronic fund transfer ("EFT") or
8 cashier's or certified check payable to the "Treasury,
9 United States of America." Payment by EFT Respondent shall
10 be transferred to the following address:
11

12 Mellon Bank
13 ABA 043000261
14 Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

15 Payment by cashier's or certified check shall be sent by
16 certified mail, return receipt requested, to the following
17 address:

18 U.S. Environmental Protection Agency
19 Region 9
20 P.O. Box 371099M
Pittsburgh, PA 15251

21 18. The check shall note the case title and docket number.
22 Concurrent with the delivery of payment, Respondent shall
23 send a copy of the transfer or check to the following
24 addresses:

25 Marie Broadwell
26 Enforcement Officer
27 Enforcement Office, Air Division (AIR-5)

1 In the Matter of: Sunnyvale Ford, Inc.

2 U.S. Environmental Protection Agency
3 Region 9
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Brian P. Riedel
7 Assistant Regional Counsel (ORC-2)
8 U.S. Environmental Protection Agency
9 Region 9
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 Regional Hearing Clerk (ORC-1)
13 U.S. Environmental Protection Agency
14 Region 9
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 19. Payment of the above civil administrative penalty shall not
18 be used by Respondent or any other person as a tax deduction
19 from Respondent's federal, state, or local taxes.

20 20. In the event that the full assessed penalty in this case is
21 not transferred or postmarked on or before its due date,
22 Respondent agrees to pay a stipulated penalty of fifty
23 thousand dollars (\$50,000) immediately in lieu of the civil
24 administrative penalty, plus interest and costs as allowed
25 by law.

26 21. Additionally, Respondent's failure to pay any of the penalty
27 installments by its due date may lead to any or all of the
28 following actions:

a. The debt being referred to a credit reporting agency, a
collection agency, or the Department of Justice for filing

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2 of a collection action in the appropriate United States
3 District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. In
4 any such collection action, the validity, amount, and
5 appropriateness of the assessed penalty and of this CAFO
6 shall not be subject to review.

7 b. The debt being collected by administrative offset (i.e.,
8 the withholding of money payable to the United States to, or
9 held by the United States for, a person to satisfy the debt
10 the person owes the Government), which includes, but is not
11 limited to, referral to the Internal Revenue Service for
12 offset against income tax refunds. 40 C.F.R. Part 13,
13 Subparts C and H.

14 c. EPA may (i) suspend or revoke Respondent's licenses or
15 other privileges; (ii) suspend or disqualify Respondent from
16 doing business with EPA or engaging in programs EPA sponsors
17 or funds; (iii) convert the method of payment under a grant
18 or contract from an advanced payment to a reimbursement
19 method; or (iv) revoke a grantee's or contractor's letter-
20 of-credit. 40 C.F.R. §§ 13.14 and 13.17.

21
22
23 22. In accordance with the Debt Collection Act of 1982, 31
24 U.S.C. § 3717, and 40 C.F.R. Part 13, interest, penalties
25 charges, and administrative costs will be assessed against
26 the outstanding amount that Respondent owes to EPA for
27

1 In the Matter of: Sunnyvale Ford, Inc.

2 Respondent's failure to pay in full the civil penalty by its
3 due date. Interest will be assessed at an annual rate that
4 is equal to the rate of current value of funds to the United
5 States Treasury (i.e., the Treasury tax and loan account
6 rate) as prescribed and published by the secretary of the
7 Treasury in the Federal Register and the Treasury Fiscal
8 Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
9 Penalty charges will be assessed monthly at a rate of 6% per
10 annum. 40 C.F.R. § 13.11(c). Administrative costs for
11 handling and collecting Respondent's overdue debt will be
12 based on either actual or average cost incurred, and will
13 include both direct and indirect costs. 40 C.F.R.
14 § 13.11(b). In addition, if this matter is referred to
15 another department or agency (e.g., the Department of
16 Justice, the Internal Revenue Service), that department or
17 agency may assess its own administrative costs, in addition
18 to EPA's administrative costs, for handling and collecting
19 Respondent's overdue debt.
20
21

22 **VII. RETENTION OF RIGHTS**

23 23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
24 resolves Respondent's liability for federal civil penalties
25 for the violations specifically alleged in this CAFO.
26 Nothing in this CAFO is intended to or shall be construed to
27
28

1 *In the Matter of: Sunnyvale Ford, Inc.*

2 resolve (i) any civil liability for violations of any
3 provision of any federal, state, or local law, statute,
4 regulation, rule, ordinance, or permit not specifically
5 alleged in Section IV of this CAFO; or (ii) any criminal
6 liability. In addition to any other authority, right, or
7 remedy available to EPA, EPA specifically reserves any and
8 all authorities, rights, and remedies available to it
9 (including, but not limited to, injunctive or other
10 equitable relief or criminal sanctions) to address any
11 violation of this CAFO or any violation not specifically
12 alleged in this CAFO.
13

14 24. This CAFO does not exempt, relieve, modify, or affect in any
15 way Respondent's duty to comply with all applicable federal,
16 state, and local laws, regulations, rules, ordinance, and
17 permits.

18 **VIII. COMPLIANCE CERTIFICATION**

19 25. By executing this Consent Agreement, Sunnyvale certifies
20 that it is in compliance with the requirements of 40 C.F.R.
21 Part 82, Subpart B.
22

23 **IX. ATTORNEYS' FEES AND COSTS**

24 26. Each party shall bear its own attorney's fees, costs, and
25 disbursements incurred in this proceeding, except as
26 provided for elsewhere in this Consent Agreement.
27

2 **X. EFFECTIVE DATE**

3 27. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
4 this CAFO shall be effective on the date that the Final
5 Order contained in this CAFO, having been approved and
6 issued by either the Regional Judicial Officer or Regional
7 Administrator, is filed.
8

9 **XI. BINDING EFFECT**

10 28. The undersigned representative of Complainant and the
11 undersigned representative of Respondent each certifies that
12 he or she is fully authorized to enter into the terms and
13 conditions of this CAFO and to bind the party he or she
14 represents to this CAFO.

15 29. The provisions of this CAFO shall apply to and be binding
16 upon Respondent and its officers, directors, employees,
17 agents, trustees, servants, authorized representatives,
18 successors, and assigns.
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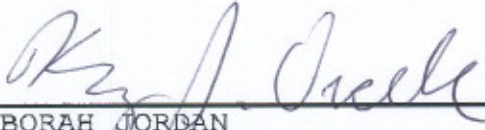
20 **XII. MISCELLANEOUS**

21 30. This CAFO constitutes a "prior violation," as that term is
22 used in the Penalty Policy, and a "Section 609 enforcement
23 response," as that term is used in the Penalty Policy's
24 Appendix IX, dated July 19, 1993.
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26
27

1 In the Matter of: Sunnyvale Ford, Inc.

2 FOR THE UNITED STATES ENVIRONMENTAL
3 PROTECTION AGENCY, REGION 9:

4 Date: 9/21/2007




5
6 for

DEBORAH JORDAN
Director, Air Division
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California 94105

9
10 FOR SUNNYVALE FORD, INC.

11 Date: 9/12/2007



Name: STEVE FUENTES
Title: PRESIDENT

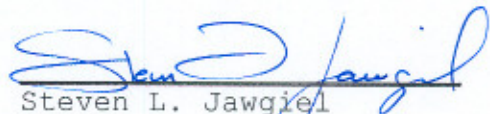
1 In the Matter of: Sunnyvale Ford, Inc.

2 FINAL ORDER

3 EPA Region 9 and Sunnyvale Ford, Inc., having entered into
4 the foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this Consent Agreement and Final
6 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. CAA-9-
7 2007-0027) be entered, and Respondent shall pay a civil
8 administrative penalty in accordance with the terms set forth in
9 the Consent Agreement.
10

11 Date: 09 / 25 / 2007



12 Steven L. Jawgiel
13 Regional Judicial Officer
14 United States Environmental
15 Protection Agency, Region IX
16 75 Hawthorne Avenue
17 San Francisco, California 94105-3143
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1 In the Matter of: Sunnyvale Ford, Inc.

2
3 **CERTIFICATE OF SERVICE**

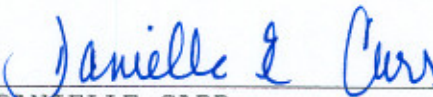
4 I certify that the original of the foregoing Consent Agreement
5 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket
6 No. CAA-9-2007- , was placed in the United States Mail,
7 certified mail, return receipt requested, addressed to the
8 following person authorized to receive service of process in this
9 matter:

10 Mr. Brian J. McSweeney, Esq.
11 P.O. Box 2085
12 Menlo Park, CA 94025

13 Certified Return Receipt No.

14
15 Date: SEP/26/2007

16 By:



17 DANIELLE CARR
18 Regional Hearing Clerk
19 United States Environmental
20 Protection Agency, Region 9
21 75 Hawthorne Avenue
22 San Francisco, California 94105-3143
23
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