

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven Viggiani 3/16/11
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2011-0021

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Preferred Freezer Services, LLC
360 Avenue P
Newark, NJ 07105

Total Dollar Amount of Receivable \$ 37,781 Due Date: 4/14/11

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

March 15, 2011

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

RECEIVED
MAR 15 2011
EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of Preferred Freezer Services, LLC.,
Docket No. CAA-01-2011-0021

Dear Ms. Santiago:

Please accept for filing the attached original and two copies of a Consent Agreement and Final Order ("CAFO") settling the above-captioned case. The CAFO was fully executed by the parties on March 14, 2011, and by the Regional Judicial Officer on March 15, 2011.

Please note that this enforcement action has no accompanying administrative complaint. Instead, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), this CAFO simultaneously commences and settles the action.

If you have any questions regarding the CAFO, please call me at (617) 918-1729. Thank you for your assistance with this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel

Attachments (original and two copies)

cc: James D, Ray, Esq.
John J. Galiher

In the Matter of Preferred Freezer Services, LLC, Docket No. CAA-01-2011-0021

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and two copies of the final Consent Agreement and Final Order (“CAFO”) in the above-captioned case, together with a cover letter, and arranged to send a copy of the CAFO and letter via mail to Respondent’s counsel and to Respondent at the addresses set forth below:

HAND-DELIVERY: (original and two copies)

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

VIA FIRST CLASS MAIL:

James D. Ray, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07926-2075

John J. Galiher, President
Preferred Freezer Services, LLC
150 Bayway Avenue
Elizabeth, New Jersey 07202

Date: 3/15/11



Steven J. Viggiani
Senior Enforcement Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

MAR 15 2010

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)	Docket No. CAA-01-2011-0021
Preferred Freezer Services, LLC)	CONSENT AGREEMENT
360 Avenue P)	AND FINAL ORDER
Newark, New Jersey 07105)	
)	
Proceeding under Section 113(d) of)	
the Clean Air Act, 42 U.S.C. § 7413(d))	

I. INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant"), has alleged that Preferred Freezer Services, LLC ("Preferred" or "Respondent") has violated certain sections of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and regulations implementing the CAA, at three of Preferred's commercial refrigeration facilities in Massachusetts. EPA and Preferred have agreed to settle this matter through an administrative Consent Agreement and Final Order ("CAFO"). EPA's regulations governing CAA administrative penalty actions and settlements are set out at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), this CAFO is being issued without an accompanying administrative complaint.

II. ENFORCEMENT AUTHORITY

2. Sections 113(a)(3) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1), provide, among other things, that EPA may commence an

administrative penalty action against any person found in violation of various CAA provisions and implementing regulations, including the CAA's Stratospheric Ozone Provisions (CAA Subchapter VI) and its implementing regulations, and Section 114 of the CAA. Pursuant to Section 113(d)(1) of the CAA, the Debt Collection Improvement Act ("DCIA"), 31 U.S.C. § 3701, and the DCIA's implementing regulations at 40 C.F.R. Part 19, EPA may assess penalties of up to \$37,500 per day for each violation.

3. This CAFO alleges violations that occurred more than twelve months ago. Consequently, EPA and the U.S. Department of Justice have jointly determined in accordance with Section 113(d)(1) of the CAA that this matter is appropriate for an administrative penalty action.

III. FACTUAL BACKGROUND

4. Preferred owns and operates 25 refrigerated warehouse facilities in the United States, and two more facilities in Asia. Preferred operates four facilities in Massachusetts, located at 60 Commercial Street in Everett ("Everett facility"), 517 Paramount Drive in Raynham ("Raynham facility"), One Commercial Street in Sharon ("Sharon facility"), and 45 Campanelli Drive in Westfield ("Westfield facility").

5. Based on information obtained during and after EPA inspections conducted in 2008-09, EPA determined that Preferred's Raynham, Sharon and Westfield facilities violated federal stratospheric ozone protection regulations designed to prevent chlorofluorocarbons ("CFCs") from leaking from industrial refrigeration equipment and damaging the Earth's stratospheric ozone layer. EPA issued Preferred

an administrative compliance order on March 16, 2010, and the parties held a face-to-face conference to discuss the administrative order on July 14, 2010.

IV. STATUTORY AND REGULATORY BACKGROUND

6. The CAA's Stratospheric Ozone Protection provisions, set out in Sections 610 - 618 of the CAA, 42 U.S.C. §§ 7671-7671q, were enacted by Congress in 1990 to protect the layer of stratospheric ozone shielding the Earth and its inhabitants from harmful radiation by reducing the emission of substances that have or may have harmful effects on the stratospheric ozone layer.

7. Sections 602(a) and (b) of the CAA, 42 U.S.C. §§ 7671a(a) and (b), list certain ozone-depleting substances, termed "class I" and "class II" substances, which cause or significantly contribute to harmful effects on the stratospheric ozone layer.

8. Section 601(1) of the CAA, 42 U.S.C. § 7671(1), defines an "appliance" as "any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer."

9. Section 608 of the CAA, 42 U.S.C. § 7671g, requires EPA to promulgate regulations establishing standards and requirements for the use and disposal of class I and class II ozone-depleting substances during the service, repair or disposal of appliances and industrial process refrigeration.

10. Pursuant to Section 608 of the CAA, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, entitled "Protection of Stratospheric Ozone, Subpart F – Recycling and Emissions Reduction" ("Stratospheric Ozone Protection regulations" or "Subpart F").

11. Separately, Section 114 of the CAA, 42 U.S.C. § 7414, provides EPA the authority to require sources to submit such information as EPA may reasonably require to determine the source's compliance with the CAA and its implementing regulations, including those promulgated at 40 C.F.R. Part 82.

V. STRATOSPHERIC OZONE PROTECTION VIOLATIONS

12. The Stratospheric Ozone Protection regulations apply to, among other things, commercial refrigeration appliances that normally contain more than 50 pounds of "refrigerants," defined as substances containing certain specified ozone-depleting class I or class II substances. These specified ozone-depleting substances are listed at 40 C.F.R. Part 82, Subpart A, Appendices A and B, and include monochlorodifluoromethane ("HCFC-22"), a class II substance. HCFC-22 is also known as R-22.

13. Preferred's Raynham, Sharon and Westfield facilities have commercial refrigeration appliances that use HCFC-22. These appliances normally contain HCFC-22 in amounts that exceed 50 pounds.

14. Accordingly, Preferred is subject to the Stratospheric Ozone Protection regulations at its Raynham, Sharon and Westfield facilities.

A. Certification of Recovery and Recycling Equipment

15. Pursuant to 40 C.F.R. § 82.162, persons maintaining, servicing or repairing appliances must certify to EPA, within 20 days of commencing business, that they have acquired certified recovery or recycling equipment and that they are complying with the applicable requirements of Subpart F.

16. The Sharon, Raynham and Westfield facilities employ recovery or recycling equipment in the maintenance, service or repair of appliances, and commenced business in August 2002, June 2003, and October 2006, respectively.

17. Preferred failed to certify to EPA within 20 days of commencing business at Preferred's Sharon, Raynham and Westfield facilities that the equipment used at each of these facilities was certified recovery or recycling equipment and that Preferred was complying with the applicable requirements of Subpart F. Instead, Preferred submitted the required certifications for all three facilities in April 2009. Accordingly, Preferred violated the requirements of 40 C.F.R. § 82.162.

B. Technician Certification

18. Pursuant to 40 C.F.R. § 82.161(a), technicians who service the appliances must be certified by an approved technician certification program.

19. At various times in 2006 to 2009, a Preferred technician serviced appliances at the Raynham and Sharon facilities without being certified by an approved certification program. Specifically, Preferred's uncertified technician added refrigerant to appliances at the Raynham and Sharon facilities on the following dates:

- (a) March 15, 2006 (Raynham);
- (b) March 24, 2006 (Sharon);
- (c) June 15, 2006 (Raynham);
- (d) October 10, 2007 (Raynham);
- (e) December 12, 2007 (Raynham);
- (f) January 30, 2008 (Raynham);
- (g) July 8, 2008 (Sharon);
- (h) October 30, 2008 (Raynham);
- (i) March 5, 2009 (Raynham);
- (j) March 31, 2009 (Raynham);
- (k) April 21, 2009 (Sharon); and
- (l) June 15, 2009 (Sharon).

Accordingly, on each of these dates, Preferred violated the requirements of 40 C.F.R. § 82.161(a).

VI. CAA SECTION 114 VIOLATION

20. As authorized by Section 114 of the CAA, EPA during its investigation issued to Preferred a Reporting Requirement letter on August 11, 2009. Preferred was required to provide its responses no later than 30 days after receipt of the Reporting Requirement. By subsequent agreement with EPA, this deadline was extended to October 1, 2009, and Preferred provided responses to the Reporting Requirement on this date.

21. As alleged above in Paragraph 5, EPA and Preferred held a face-to-face meeting on July 14, 2010. At this meeting, and in a subsequent letter dated July 21, 2010, Preferred substantially revised its Reporting Requirement responses. Notably, in its letter of July 21, 2010, Preferred directed that its previous

responses to EPA regarding the service and repair records for refrigeration units at Preferred's Sharon, Raynham and Westfield facilities be "disregarded" and replaced with new responses that included numerous additional records.

22. Preferred failed to provide complete responses to EPA's Reporting Requirement by October 1, 2009, and did not provide complete responses until July 2010. Accordingly, Preferred violated Section 114 of the CAA.

VII. GENERAL TERMS

23. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its officers, directors, successors and assigns.

24. Respondent admits that Complainant has jurisdiction over the subject matter described in this CAFO and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the factual allegations contained in Sections V and VI above. For the purposes of this CAFO and any action necessary to enforce it, Respondent waives any right to a judicial or administrative hearing or appeal regarding this CAFO, and to otherwise contest the allegations of this CAFO.

25. In settlement of this matter, Respondent consents to the assessment of the civil penalty set out in Section IX below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in the CAFO.

VIII. COMPLIANCE CERTIFICATION

26. Preferred certifies that its Raynham, Sharon and Westfield facilities are currently in compliance with the federal Stratospheric Ozone Protection regulations at 40 C.F.R. Part 82, Subpart F.

IX. CIVIL PENALTIES

27. Preferred shall pay a civil penalty of \$75,000, plus calculated interest, on the schedule set out below. EPA has determined that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors. Preferred shall pay the penalty as follows: not later than 30 days after the effective date of this CAFO, Preferred shall pay \$37,500; and, not later than 90 days after the effective date of this CAFO, Preferred shall pay \$37,781, comprised of \$37,500 plus \$281 in calculated interest.

28. To make each of these penalty payments, Preferred shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," and referencing the title of this action and the CAA case docket number (CAA-01-2011-0021). The check shall be sent via regular mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If Preferred sends the check via express mail, the following address shall be used:

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

29. Preferred shall send a notice of each penalty payment and a copy of each check to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
Mail code ORA-18-1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. EPA, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

30. If Preferred fails to pay any penalty payment in full by its due date, Preferred shall pay interest on the late amount, a quarterly nonpayment penalty, and any governmental enforcement expenses incurred to collect the late payment, all in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

31. Preferred certifies that it shall not use any payments made pursuant to this Section in any way as, or in furtherance of, a tax deduction for Preferred, or for any of Preferred's corporate affiliates or officers, under federal, state or

local law. Preferred specifically waives any confidentiality rights it may have pursuant to 26 U.S.C. § 6103 with respect to such payments on its federal tax returns and return information, and any such rights regarding any state or local tax returns, as to EPA and the United States for the purpose of ensuring the accuracy of this certification.

X. EFFECT OF SETTLEMENT

32. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 113 of the CAA for the violations set out in Sections V and VI above.

33. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Preferred for criminal activity, or to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies available to it to enforce the provisions of this CAFO, the CAA and its implementing regulations and permits, and any other federal, state or local law or regulation.


34. This CAFO shall not relieve Preferred of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 32 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

35. Each party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

36. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

SO SIGNED:


For Complainant:



Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1

Date: 03/14/11

For Respondent:



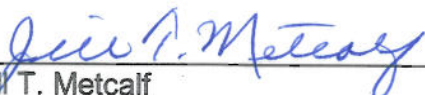
John J. Gaffner, President, CEO
Preferred Freezer Services, LLC

Date: 3-8-11

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement, which shall be effective on the date that it is filed with the Regional Hearing Clerk.

SO SIGNED:



Jill T. Metcalf
Acting Regional Judicial Officer
EPA Region 1

Date: March 15, 2011