



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 JUL 26 AM 11:16

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0011

IN THE MATTER OF:)	
)	
A PLUS RECYCLING)	FINAL ORDER
651 Industrial Avenue)	
Rapid City, SD 57702)	
)	
RESPONDENT)	

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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 26th DAY OF July, 2010.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARING CLERK

IN THE MATTER OF:)
)
A Plus Recycling)
651 Industrial Avenue)
Rapid City, SD 57702)
)
Respondent)
)

**CONSOLIDATED COMPLAINT AND
CONSENT AGREEMENT**
DOCKET NO. : CAA-08-2010-0011

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 608, 42 U.S.C. § 7671g. 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 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, Subpart F of Title 40 of the Code of Federal Regulations (C.F.R.).
2. Under 40 C.F.R. § 82.152, the following definitions apply:
 - “Appliance” means “any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.”

- “Disposal” means “the process leading to and including:
 - (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;
 - (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or
 - (3) the disassembly of any appliance for reuse of its component parts.”

- “Small appliance” means “any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.”

3. Pursuant to 40 C.F.R. § 82.156(f), persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioner, MVAC, or MVAC-like appliances, must either recover all remaining refrigerant or verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.156(g) or (h), as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

4. 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

5. On March 4, 2010, an authorized representative of EPA conducted an inspection of Respondent's facility, A Plus Recycling, with the consent of Respondent, to determine compliance with the CAA and its implementing regulations. A Plus Recycling is a metal scrap recycler.

6. During the inspection, the EPA inspector observed a white refrigerator sitting on the lot with an intact refrigeration circuit. Under 40 C.F.R. § 82.152, and outlined in paragraph #2, the above observation constitutes "Disposal" of a small appliance.

7. Based on observations made in paragraph #6, Complainant determined a violation of 40 C.F.R. §§ 82.156(f)(1) and (2), when Respondent disposed of a small appliance without verifying that refrigerant had been removed.

CONSENT AGREEMENT

8. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.

9. 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.

10. This Complaint and Consent Agreement, upon incorporation into a final 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.

11. 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 \$37,500 per day of violation for each violation of the implementing regulations associated with the “Stratospheric Ozone Protection” requirements of Subchapter VI, section 608 of the CAA, 42 U.S.C. § 7671g. 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.

12. Based on the factors listed in paragraph 11, and Respondent’s acknowledgement that it is in full compliance with the requirements of the CAA, EPA has determined that an appropriate civil penalty to settle this action is **Nine Hundred Seventy-Two Dollars (\$972)**.

13. Respondent consents, for the purpose of settlement, to the issuance of a final 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 **NINE HUNDRED AND SEVENTY-TWO DOLLARS (\$972)** due within 30 calendar days from the date written on a final 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 17th 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

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 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 61st day from the date of the final 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 121st day from the date the final 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.

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

15. 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.

16. 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.

17. 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.

18. 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 order.

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

20. This Complaint and Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil

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: 7/21/10

By: Michael T. Binner
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

A PLUS RECYCLING
Respondent.

Date: 6-18-10

By: Donald W Rice

Printed Name: DONALD W RICE

Title: owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter of **A PLUS RECYCLING; DOCKET NO.: CAA-08-2010-0011**. The documents were filed with the Regional Hearing Clerk on July 26, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Margaret "Peggy" Livingston, 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 July 26, 2010.

Don Rice
A Plus Recycling
651 Industrial Avenue
Rapid City, SD 57702

E-mailed to:

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

July 26, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

