



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2008 NOV 20 AM 10:26

DOCKET NO.: CAA-08-2009-0002

IN THE MATTER OF:)	
)	
COLORADO INDUSTRIAL)	FINAL ORDER
RECYCLING, INC.)	
)	
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 Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 20th DAY OF November, 2008.



 Elyana R. Suth
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 NOV 20 AM 10:26

IN THE MATTER OF:)	
)	
Colorado Industrial Recycling, Inc.)	COMPLAINT AND CONSENT AGREEMENT
2730 East Las Vegas Street)	(SIMULTANEOUS AND COMBINED)
Colorado Springs, CO 80306)	
)	DOCKET NO. : CAA-08-2009-0002
Respondent)	
)	

COMPLAINT

GENERAL ALLEGATIONS

1. This civil administrative enforcement action is authorized by Congress in the Clean Air Act (CAA), and issued pursuant to section 113(a)(3)(B) of the 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. § 7671(g). EPA regulations authorized by the statutes are set out in part 82, subpart F of title 40 of the Code of Federal Regulations (C.F.R.). 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 (simultaneous combined action) 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. These general allegations apply to each violation below.

2. On April 15, 2008, two authorized representatives of EPA conducted an inspection of Respondent's facility, with the consent of Respondent, to determine compliance with the CAA and its implementing regulations. During the compliance and subsequent case reviews, EPA observed that Colorado Industrial Recycling, Inc. was not in compliance with the regulations implementing the CAA, Subchapter VI, section 608. These observed violations are set out in detail in Paragraph 11 below.

3. At all times relevant to this action, Respondent is a "person" as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.

4. During the inspection referenced in Paragraph 2 above, the EPA inspectors observed that Respondent takes the final step in the disposal of appliances and small appliances normally containing refrigerants.

STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into the Counts of this COMPLAINT AND CONSENT AGREEMENT:

5. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, section 608 of the CAA, 42 U.S.C. § 7671g, found at 40 C.F.R. § 82.152, Definitions, an "appliance" is defined as 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.

6. Under the regulations referenced in Paragraph 5 above, a "small appliance" is defined as 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.

7. Under the regulations referenced in Paragraph 5 above, "disposal" is defined as the process leading to and including the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water.

8. Under the regulations referenced in Paragraph 5 above, "motor vehicle air conditioner" (MVAC) is defined as any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. part 82, subpart B.

9. Under the regulations 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 conditioning, MVACs, 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.

10. Under the regulations found at 40 C.F.R. 82.156(b) all persons disposing of appliances except small appliances, MVACs, and MVAC-like appliances must have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business.

VIOLATIONS

11. On one or more occasions, Respondent failed to comply with the following requirements:

COUNT I

- a. During the inspection the EPA inspectors observed Respondent taking the final step in the disposal of MVACs normally containing refrigerants.
- b. During the inspection the EPA inspectors verified that Respondent failed to recover refrigerant (R-12) from a 1983 Subaru GL (VIN: JF2AM53B5DF444711; Colorado License Plate #: WSS-272).
- c. Respondent took the final step in the disposal process of the MVAC described in the preceding paragraph without either recovering the refrigerant or verifying that refrigerant had been properly removed in violation of 40 C.F.R. § 82.156(f)(1) and (2).

COUNT II

- d. During the inspection the EPA inspectors observed Respondent taking the final step in the disposal of small appliances normally containing refrigerants.
- e. During the inspection the EPA inspectors observed that Respondent failed to recover refrigerant from a General Electric air conditioning unit, a small appliance, containing R-22 refrigerant prior to disposal.
- f. Respondent took the final step in the disposal process of the small appliance described in the preceding paragraph without either recovering the refrigerant or verifying that refrigerant had been properly removed in violation of 40 C.F.R. § 82.156(f)(1) and (2).

COUNT III

- g. During the inspection the EPA inspectors observed Respondent disposed of one large appliance (York Air Conditioner Model H2CB048506C) without having at least one piece of certified, self-contained recovery or recycling equipment available at its place of business in violation of 40 C.F.R. § 82.156(b).
- h. The CAA regulations governing Stratospheric Ozone Protection require Respondent to have at least one piece of certified, self-contained recovery or recycling equipment available at their place of business when they dispose large appliances.

CONSENT AGREEMENT

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

13. 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.

14. 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.

15. 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 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.

16. Based on the factors listed in paragraph 15, 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 **Two Thousand Nine Hundred Seventy-Five Dollars (\$2,975)**.

17. 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. Respondent further consents, for the purpose of settlement, to the performance of the SEP described below and to pay the civil penalty as follows:

- a. Payment is to be made in two installments of **One Thousand Four Hundred and Eighty-Eight Dollars (\$1,488)** per installment, and the first installment is due within 30 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. The second installment of **One Thousand Four Hundred and Eighty-Seven Dollars (\$1,487)** is 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.

- 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:

David Cobb, 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

18. Description of the SEP:

- a. Respondent shall perform a SEP that involves the development of a Sustainable Development Program designed to promote environmental sustainability. The program will be focused on regulatory compliance, energy reduction, and waste generation reduction.
- b. Respondent shall create a Material Acceptance Policy to evaluate the scrap metal streams and indentify certain materials that are unacceptable, provide a written plan that defines what Respondent can and cannot receive, and provide employee training on identification and handling of unacceptable materials in the scrap metal streams.
- c. Respondent shall implement a Pollution Prevention Plan which includes increased employee training, and audits for all facility processes to identify possible waste stream improvements. The Respondent shall also create a written Pollution Prevention Plan that encourages recycling waste whenever possible, reducing the generation of hazardous waste at the source, and reducing the use of toxic substances.
- d. Respondent shall implement a Storm Water Spill Plan to create procedures, training, and audits, designed to improve the facilities response to a spill. The plan will also address storm water pollution prevention.
- e. **Respondent shall complete the work on the SEP no later than March 1, 2009.** unless the parties agree in writing to an extension of the completion date.

19. The total expenditure for the SEP shall not be less than **Eight Thousand Nine Hundred and Twenty Five Dollars (\$8,925)**. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

20. 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.

21. Respondent agrees that the SEP expenditures shall never be claimed as a federal or other tax deduction or credit.

22. 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.

23. 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.

24. 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.

25. 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.

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

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

Stipulated Penalties and Late Fees

27. 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 Eight Thousand Nine Hundred and Twenty Five Dollars (\$8,925).
- b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Eight Thousand Nine Hundred and Seventy Five Dollars (\$8,925), 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.

28. Stipulated penalties for subparagraph 25(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.

29. 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 paragraph 17.


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

31. 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.
32. 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.
33. 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.
34. 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.
35. Each party shall bear its own costs and attorney fees in connection with this matter.
36. 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.

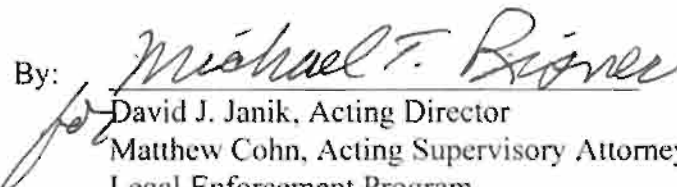
In Re: Colorado Industrial Recycling, Inc.

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


Date: 11/18/08

By: 
Cynthia J. Reynolds, Director
Technical Enforcement Program
U.S. EPA Region 8

Date: 11/18/08

By: 
David J. Janik, Acting Director
Matthew Cohn, Acting Supervisory Attorney
Legal Enforcement Program
U.S. EPA Region 8

Date: 11/17/08

By: 
Marc Weiner
Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129
303.312.6913

COLORADO INDUSTRIAL RECYCLING, INC
Respondent.

Date: 11-6-08

By: 

Printed Name: David Koscor

Title: OWNER

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER, DOCKET NO.: CAA-08-2009-0002** was filed with the Regional Hearing Clerk on November 20, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on November 20, 2008, to:

Colorado Industrial Recycling, Inc.
David Koscove, Owner
2730 East Las Vegas Street
Colorado Springs, CO 80306

E-mailed to:

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

November 20, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

