

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5th STREET

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

William Tusay)

d/b/a Tusay's Garage)

124 Commercial)

Belton, Missouri 64102)

Respondent)

Docket No. CAA-07-2006-0128

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and William Tusay d/b/a Tusay's Garage (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, (hereinafter "the Act"), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated certain "Stratospheric Ozone Protection"

requirements of Subchapter VI, at Section 609(c) of the Act, 42 U.S.C. 113(d)(2)(A).

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is William Tusay, d/b/a Tusay's Garage, 124 Commercial, Belton, Missouri 64012.

Alleged Violations

5. The Complainant hereby states and alleges that Respondent has violated the Act and federal regulations promulgated thereunder, as follows:

6. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e)

7. On or about July 8, 2005, an inspection was conducted at Tusay's Garage, 124 Commercial, in Belton, Missouri. During the inspection, one Motor Vehicle Air Conditioning Systems (MVACs) recover/recycle machine, a Myers Enterprises, Model Mr-1991-A, Serial Number 92-701-621, was observed. Respondent stated the MVACs machine was used to service vehicles containing either R12 or R134a refrigerant.

8. The MVACs machine mentioned in Paragraph 7, above, is not approved for use with R-134a refrigerant.

9. 40 C.F.R. § 82.34(a)(1) prohibits any person repairing or servicing motor vehicle air conditioners (MVACs) for consideration, or any person repairing or servicing MVAC-like appliances to perform any service involving the refrigerant for such MVAC or MVAC-like appliance without properly using equipment approved pursuant to 40 C.F.R. § 82.36.

10. Respondent failed to properly use equipment approved pursuant to 40 C.F.R. § 82.36 as required by 40 C.F.R. § 82.34(a)(1).

11. Respondent's failure to comply with 40 C.F.R. § 82.34(a)(1), is a violation of § 609(c) of the Act, 42 U.S.C. § 7671h(c).

12. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and based upon the facts stated in paragraphs 7 through 11, a civil penalty of Four Thousand Nine Hundred and Three Dollars (\$4,903.00) was proposed.

CONSENT AGREEMENT

13. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

14. Respondent admits the factual allegations set forth above.

15. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

17. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of the Act and all regulations promulgated thereunder.

18. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

19. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and upon

information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Complaint, shall pay by cashier's or certified check, a civil penalty, for the violation cited therein, in the amount of One Hundred Dollars (\$100.00), payable to the "Treasurer, United States of America", and such check shall be mailed to:

Mellon Bank
US EPA Region 7
PO Box 371099M
Pittsburgh, PA 15251

A copy of the check shall be mailed to:

Kent Johnson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

3. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

4. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY



Kent Johnson
Attorney
Office of Regional Counsel

Date: 3/21/06

RESPONDENT:

William Tusay
William Tusay
d/b/a Tusay's Garage

Date: 3-9-06

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
~~ROBERT L. PATRICK~~
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: March 21, 2006

IN THE MATTER OF William Tusay d/b/a Tusay's Garage, Respondent
Docket No. CAA-07-2006-0128

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by overnight Federal Express to:

William Tusay
Tusay's Garage
124 Commercial
Belton, Missouri 64102

3/22/06
Dated



Kathy Robinson
Regional Hearing Clerk