



**Re: Chicago Imports SEP**   
Matthew Dehart to: Tina Artemis  
Cc: Linda Kato

01/11/2010 01:53 PM

Hello Tina,

I have responded to each of the questions in the attached document. Please let me know if there is anything else you need.

Thank you,



Response to questions posed by Judge Sutin regarding CCCA for Chicago Imports.doc

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Tina Artemis

Judge Sutin has some clarifying questions regar...

01/05/2010 11:04:59 AM

From: Tina Artemis/R8/USEPA/US  
To: Matthew Dehart/R8/USEPA/US@EPA, Linda Kato/R8/USEPA/US@EPA  
Date: 01/05/2010 11:04 AM  
Subject: Chicago Imports SEP

Judge Sutin has some clarifying questions regarding the latest SEP in the CCCA on Chicago Imports. Could you please answer them for me? Would you also please forward to the respondent and/or there attorney. I do not know who that is.

Please explain how paragraph 16(d) on page 7 of the Combined Complaint and Consent Agreement ("CCCA") complies with the following provisions of the 1998 SEP Policy:

- 1) Section B - Page 4: "not otherwise legally required to perform." Paragraph 15 of the CCCA appears to be injunctive relief. How is the cost associated with this allowed as a SEP?
- 2) Section C - Page 5: "A project cannot be inconsistent with any provision of the underlying statutes." Please explain how the cost to destroy ODS products as part of a SEP is consistent with the Clean Air Act and 40 CFR 82.
- 3) Section D(5)- Page 9-10: Environmental Compliance Audits. Credit is only given for the costs associated with conducting the audit. Also, compliance audits are acceptable as SEPs only when defendant/respondent is a small business. Please explain how the SEP complies with this provision.
- 4) Section E - Page 12: Calculation of the Penalty. Settlement Amount without a SEP. Is the cost to destroy ODS products included in the penalty? If so, why is it again included in the SEP? If not, please explain why?
- 5) Section J - Page 20: "In all cases where a SEP may not fully comply with the provisions of the Policy the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance

Response to questions posed by Judge Sutin regarding CCCA for Chicago Imports, Inc.  
1/5/2010

Please explain how paragraph 16(d) on page 7 of the Combined Complaint and Consent Agreement ("CCCA") complies with the following provisions of the 1998 SEP Policy:

1) Section B - Page 4: "not otherwise legally required to perform." Paragraph 15 of the CCCA appears to be injunctive relief. How is the cost associated with this allowed as a SEP?

**Respondent is not required to destroy the material in the canisters. In the absence of EPA authority to instruct a respondent to destroy the banned material, a likely outcome would be to return the canister inventory to the manufacturer in China. At that time, the product would either be re-distributed into commerce or could even be vented by the manufacturer. The destruction of the product as a part of a SEP is to ensure the ODS does not end up in the atmosphere.**

2) Section C - Page 5: "A project cannot be inconsistent with any provision of the underlying statutes." Please explain how the cost to destroy ODS products as part of a SEP is consistent with the Clean Air Act and 40 CFR 82.

**Destruction of the ODS will prevent the chlorine in the HCFC-22 from entering the atmosphere where it will destroy stratospheric ozone. This is consistent with Subchapter VI of the Clean Air Act, Stratospheric Ozone Protection.**

3) Section D(5)- Page 9-10: Environmental Compliance Audits. Credit is only given for the costs associated with conducting the audit. Also, compliance audits are acceptable as SEPs only when defendant/respondent is a small business. Please explain how the SEP complies with this provision.

**The Respondent is considered a small business because it has fewer than 100 employees. The SEP only allows credit for conducting the environmental compliance audit, and allows no credit for remedying any violations.**

4) Section E - Page 12: Calculation of the Penalty. Settlement Amount without a SEP. Is the cost to destroy ODS products included in the penalty? If so, why is it again included in the SEP? If not, please explain why?

**Destruction of the ODS product is not included in the penalty. The violation in this case is based on the Respondent distributing into commerce a banned substance. The penalty is calculated according to the Stationary Source Civil Penalty Policy which is determined based on (1) the potential for environmental harm and (2) the extent of deviation from the requirements in the statute and the implementing regulations.**

5) Section J - Page 20: "In all cases where a SEP may not fully comply with the provisions of the Policy the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance." This includes a legal analysis supporting the conclusion that the project is within EPA's legal authority. Please explain if this was done. If so, please provide verification.