



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

SEP 25 2007

Ref: 8ENF-L

**CERTIFIED MAIL:**  
**RETURN RECEIPT REQUESTED**

Nikolay Lopatin  
6000 W. 38<sup>th</sup> Avenue  
Wheat Ridge, CO 80033

Re: Complaint and Compliance Order,  
Docket Nos. **CAA-08-2007-0005;**  
**CAA-08-2007-0006**

Dear Mr. Lopatin:

Enclosed are two documents. The first is an administrative complaint seeking penalties for your violation of certain requirements of the regulations implementing the Clean Air Act ("CAA"). The second is an administrative order requiring that you prospectively comply with those same requirements.

Complaint and Notice of Opportunity for Hearing

You are hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as amended on November 15, 1990. Enclosed with this Complaint are the Consolidated Rules of Practice, the Stationary Source Civil Penalty Policy, and Complainant's Statement as to Determination of Proposed Penalty, which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that you failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. These regulations, which are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program), prohibit a person from retrofitting motor vehicle air conditioners with the substitute refrigerant "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling.



By law, you have the right to request a hearing regarding the matters set forth in this Complaint. You are encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If you do not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer, you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. You may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. Your signature on a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which you must submit your written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

#### Compliance Order

In addition, you are hereby served with a Compliance Order (referred to as the "Order") pursuant to Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended on November 15, 1990.

EPA alleges in the Order that you failed to comply with the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. The requirements of these regulations, which are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program), are set forth in the "Complaint and Notice of Opportunity for Hearing" section, above.) The Order requires you to comply with 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix D.

Violation of the Order may lead to the commencement of a civil action for permanent or temporary injunction, or to assessment and recovery of a civil penalty of not more than \$32,500 per day for each violation, or both, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19. In issuing this Order, EPA does not waive its right to seek injunctive relief or civil penalties of up to \$32,500 per day for each day of violation under Section 113(b) of the CAA for any and all violations, or both injunctive relief and civil penalties.

This Order will become effective thirty (30) calendar days from the date of your receipt of the Order, allowing you thirty (30) days in which to request a conference with EPA. Whether or not you request a conference, you may confer informally with EPA concerning the alleged violations. You may wish to be represented by counsel at the conference.

EPA Contact

If you have any legal questions or would like to discuss the possibility of settlement, please contact:

Jessie Goldfarb (8ENF-L)  
Senior Enforcement Attorney  
U.S. EPA-Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
(303) 312-6926.

EPA urges your prompt attention to these matters.

Sincerely,

*Michael T. Resner*  
*for*

Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA Stationary Source Civil Penalty Policy
4. Complainant's Statement as to Determination of Proposed Penalty
5. Compliance Order

cc w/ Enclosures 1, 4, and 5:

Greg Zurla, 8TMS-ISP  
Jessie Goldfarb, 8ENF-L

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2007 SEP 12 3:11 PM 13

IN THE MATTER OF: )  
)  
Nikolay Lopatin ) DOCKET NO. CAA-08-2007-0005  
6000 W. 38<sup>th</sup> Avenue )  
Wheat Ridge, CO 80033, ) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING  
Respondent. )  
\_\_\_\_\_ )

STATUTORY AUTHORITY

This civil administrative Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") is issued pursuant to Section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), for violation of the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k. Those regulations are found at 40 C.F.R. Part 82, Subpart G (Significant New Alternatives Policy Program). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes the Administrator of the U.S. Environmental Protection Agency ("EPA") to issue this Complaint. This authority has been duly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency-Region 8 ("U.S. EPA-Region 8").

Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), provides that before issuing an administrative penalty order, the Administrator shall give written notice to the person to be assessed an administrative penalty and provide such person an opportunity to request a hearing. This Complaint and Notice of Opportunity for

Hearing, issued pursuant to 40 C.F.R. §§ 22.13 and 22.14 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 of Practice"), 40 C.F.R. Part 22, constitutes such written notice and opportunity to request a hearing. A copy of the Consolidated Rules of Practice is enclosed.

#### GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference into the Count of this Complaint:

1. Respondent is Nikolay Lopatin ("Respondent"), an individual.
2. At all times relevant to this action, Respondent was the owner of a business called Discount Auto Repair, located at 6000 38<sup>th</sup> Avenue, Wheat Ridge, Colorado 80033 (the "facility").
3. At all times relevant to this action, Respondent was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.
4. On June 15, 2006, an inspector for the Colorado Department of Health and Environment ("CDPHE") inspected the facility referenced in Paragraph 2, above.
5. "Hot Shot" (also known as "HCFC Blend Omicron" or "Kar-Kool" or "R-414B") is a "substitute" (refrigerant) as defined by 40 C.F.R. § 82.172.
6. During the inspection referenced in Paragraph 4, above, the CDPHE inspector found that Respondent had retrofitted motor vehicle air conditioners ("MVACs") with "Hot Shot" without:

(1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling.

7. On June 15, 2006, the CDPHE inspector referenced in Paragraph 4, above, interviewed the owner of a 1991 Pace Arrow, whose MVAC had last been serviced at Respondent's facility (on June 27, 2005).

8. On June 15, 2006, the CDPHE inspector referenced in Paragraph 4, above, interviewed the owner of a 1987 Mercury Cougar, whose MVAC had last been serviced at Respondent's facility (on October 4, 2005).

9. During the inspection of the vehicles referenced in Paragraphs 7 and 8, above, the CDPHE inspector found that their MVACs had been retrofitted with "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using unique fittings; and (3) using required labelling.

10. The Final Rule memorializing EPA's decision on the acceptability of the substitute "Hot Shot", and imposing restrictions on its use, is found at 61 Federal Register 54030 (October 16, 1996). The effective date of that rulemaking was November 15, 1996.

#### STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into the Counts of this Complaint:

11. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k, found at 40 C.F.R. § 82.174(c), no person may use a substitute without adhering to any use restrictions set by the

acceptability decision, after the effective date of any rulemaking imposing such restrictions.

12. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 612 of the CAA, 42 U.S.C. § 7671k, found at 40 C.F.R. Part 82, Subpart G, Appendix D (Substitutes Subject to Use Restrictions and Unacceptable Substitutes), the use of "Hot Shot" must meet the following conditions:

a. the retrofit of the MVAC with "Hot Shot" must include replacing non-barrier hoses with barrier hoses;

b. "Hot Shot" may only be used with a set of fittings that is unique to that refrigerant (see 40 C.F.R. Part 82, Subpart G, Appendix D, 1.); and

c. when the retrofit of the MVAC with "Hot Shot" is performed, required labelling must be used (see 40 C.F.R. Part 82, Subpart G, Appendix D, 2.).

#### DESCRIPTION OF VIOLATIONS

##### COUNT I

13. Respondent retrofitted the MVACs of the vehicles referenced in Paragraphs 7 and 8, above, with "Hot Shot" without: (1) replacing non-barrier hoses with barrier hoses; (2) using required unique fittings; and (3) using required labelling, in violation of 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix D.

#### PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

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 612 of the CAA, 42 U.S.C. § 7671k, occurring after March 15, 2004. 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.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy" dated October 25, 1991 ("Penalty Policy"), including Appendix IX<sup>1</sup>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory

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<sup>1</sup>Appendix IX is entitled "Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners," July 19, 1993.



factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$12,144** for the violations alleged in this Complaint. The Penalty Policy and Complainant's Statement as to Determination of Proposed Penalty are enclosed with this Complaint and incorporated herein.

The Administrative Law Judge is not bound by EPA's Penalty Policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized by statute.

Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America" and mailed to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101.

A copy of the check must be sent to the Regional Hearing Clerk and also to Jessie Goldfarb, Senior Enforcement Attorney, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), Respondent has the right to request a hearing on the

issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)  
U.S. EPA-Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129.

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2). The proposed penalty shall become due and payable by Respondent, without further proceedings, sixty (60) days after a final order is issued upon default.

#### QUICK RESOLUTION

Respondent may resolve this proceeding at any time by paying the

specific penalty set forth in the Complaint. Such action to make payment need not contain any response to, or admission of, the allegations set forth in the Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and appeal the final order. See Section 22.18 of the Consolidated Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

Whether or not Respondent requests a hearing, it may confer informally with EPA-Region 8 concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Jessie Goldfarb (8ENF-L)  
Senior Enforcement Attorney  
U.S. EPA-Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
(303) 312-6926.

Please note that a request for an informal settlement conference does not extend the thirty-day period for filing a written Answer and requesting a hearing.

9/25/07  
Date *for* Michael T. Bisner  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

IN THE MATTER OF:  
DOCKET NOS.:

Nikolay Lopatin  
CAA-08-2007-0005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING and COMPLIANCE ORDER were hand-carried to the Regional Hearing Clerk, U.S. EPA-Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail: Return Receipt Requested to:

Nikolay Lopatin  
6000 W. 38<sup>th</sup> Street  
Wheat Ridge, CO 80033

9/25/07.  
\_\_\_\_\_  
Date

*Judith McTernan*  
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Judith McTernan