



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

OCT 24 2007

4APT-AEEB

**FEDERAL EXPRESS**

Mr. Martin Nesmith  
Nesmith Chevrolet-Buick-GMC-Pontiac, Inc.  
7334 US Highway 280  
Claxton, GA 30417

Re: Consent Agreement and Final Order In the Matter of Nesmith Chevrolet-Buick-GMC-Pontiac, Inc., Docket No. CAA-04-2008-1508(b)

Dear Mr. Nesmith:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV, Final Order, for the terms and instructions regarding your final payment on the penalty due.

Please note that due to the timing of the CAFO, EPA was required to assign the case a new Docket number to reflect the 2008 fiscal year. In addition, please note that the address to which you will need to mail the penalty payment has changed from the original version of the CAFO. The new address is included in the signed and ratified CAFO attached hereto.

Also enclosed is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice. Should you have any questions, please contact Laurie Savoy at (404) 562-9201.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg  
Chief  
Air and EPCRA Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:** )  
)  
Nesmith Chevrolet-Buick-GMC-Pontiac, )  
Inc. )  
)  
Claxton, GA )  
)  
)

**Docket No. CAA-04-2008-1508 (5)**

RECEIVED  
EPA REGION IV  
2007 OCT 24 PM 3:32  
HEARING CLERK

**Respondent.**

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action/Jurisdictional Statements**

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Nesmith Chevrolet-Buick-GMC-Pontiac, Inc. (hereinafter, "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business in the State of Georgia.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Respondent performs "service for consideration," as defined at 40 C.F.R. § 82.32(h), at its service facility located at 7334 US Highway 280, Claxton, GA, 30417.

7. Respondent performs "service involving refrigerant," as defined at 40 C.F.R. § 82.32(h), at its service facility located at 7334 US Highway 280, Claxton, GA, 30417.

8. Section 609(c) of the CAA, 42 U.S.C. § 7671h(c), and the regulations promulgated at 40 C.F.R. Part 82, Subpart B, establish that no person repairing or servicing motor vehicle air conditioners (MVACs) for consideration may perform any service on a MVAC involving the refrigerant for such air conditioner unless such person has been properly trained and certified.

9. Regulation 40 C.F.R. § 82.34(a) states that no person repairing or servicing MVACs for consideration, and no person repairing or servicing MVAC-like appliances, may perform any service involving the refrigerant for such MVAC or MVAC-like appliance unless any such person repairing or servicing an MVAC has been properly trained and certified by a technician certification program approved by the Administrator pursuant to § 82.40.

10. Section 609(d) of the CAA, 42 U.S.C. § 7671h(d), and regulations promulgated at 40 C.F.R. Part 82, Subpart B, establish that any person servicing MVAC systems shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified.

11. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 609 of CAA, 42 U.S.C. § 7671h, that occurred after March 15, 2004.

## II. Factual Allegations

12. EPA alleges that, on more than one occasion from March 1, 2006, to March 22, 2007, at its Claxton, GA, facility, Respondent performed service for consideration involving the refrigerant of MVAC systems without the use of properly trained and certified technicians. Respondent violated CAA § 609(c), 42 U.S.C. § 7671h(c), and 40 C.F.R. § 82.34(a) by failing to use properly trained and certified technicians while performing service for consideration involving the refrigerant of a MVAC system.

## III. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 11 above, but Respondent neither admits nor denies the factual allegations set out in paragraph 12 above.

14. As provided in 40 C.F.R. §22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

15. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance at all of its automotive repair facilities that perform MVAC work with all relevant MVAC requirements of the CAA at Section 609.

17. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of Section 609 alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.

18. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

#### IV. Final Order

19. Respondent is assessed a civil penalty of **FOUR THOUSAND NINE HUNDRED AND SEVENTY NINE DOLLARS (\$4,979)** which shall be paid within thirty (30) days after the date Respondent receives a copy of the fully executed CAFO.

20. This settlement is further supported by, and Respondent also agrees to implement, the Supplemental Environmental Project (SEP) described in Exhibit A. Respondent shall expend **TWENTY THOUSAND DOLLARS (\$20,000)** to complete the SEP. The SEP shall be fully implemented within five hundred and forty (540) days of the effective date of this CAFO.

21. If Respondent has not fully expended **TWENTY THOUSAND DOLLARS (\$20,000)** in performing its selected SEP activities by that date, Respondent shall pay a stipulated penalty of the difference between **TWENTY THOUSAND DOLLARS (\$20,000)** and the amount actually expended, except as described below:

- (a) If the SEP is completed satisfactorily, and Respondent expended at least 90 percent of the total amount required, Respondent shall not pay a stipulated penalty;
- (b) If the SEP was not completed satisfactorily, but Respondent expended at least 90 percent of the total amount required as evidenced by supporting documentation, Respondent shall not pay a stipulated penalty if it made a good faith effort to fully complete the SEP in a timely manner;

- (c) For the purposes of this paragraph, whether Respondent has satisfactorily completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA;

22. Respondent shall submit SEP interim reports to EPA every 120 days from the effective date of this CAFO. The SEP reports shall discuss Respondent's SEP activities and provide an accounting for its SEP expenditures.

- (a) The SEP Interim Report shall be sent to Laurie Savoy at the address in Paragraph 33.
- (b) If Respondent fails to submit the SEP Interim Report in a timely manner pursuant to this Paragraph, Respondent shall pay to the United States a stipulated penalty of ONE HUNDRED DOLLARS (\$100.00) for each day until required documents or receipts are submitted.

23. No later than 30 calendar days after the completion of the project, Respondent shall submit a SEP Completion Report to EPA. The Report shall include copies of appropriate documentation, including invoices and canceled checks, showing the total amount of SEP expenditures spent on each portion of the SEP.

- (a) The SEP Completion Report and receipts or other documentation for funds expended shall be sent to Laurie Savoy at the address in Paragraph 33.
- (b) If Respondent fails to submit copies of the receipts or other documentation for funds expended, or submit the SEP Completion Report in a timely manner pursuant to this Paragraph, Respondent shall pay to the United States a stipulated penalty of ONE HUNDRED DOLLARS (\$100.00) for each day until required documents or receipts are submitted.

24. Respondent shall pay any stipulated penalties that accrue under Paragraphs 21, 22 and 23 within fifteen (15) days after the date Respondent receives a written demand from EPA for such penalties.

25. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

26. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency, for violations of Section 609 of the Clean Air Act."

27. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

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

**The check shall reference on its face the name of the Respondent and the Docket Number of the CAFO.**

28. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Ms. Laurie Savoy  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

29. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment nor any costs associated with the SEP made pursuant to Section IV of this document.

30. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and

attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

32. This CAFO shall be binding upon the Respondent, its successors and assigns.

33. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Ms. Laurie Savoy  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9201


34. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

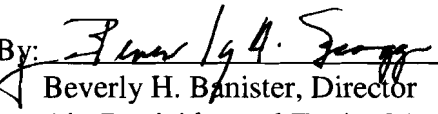
35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

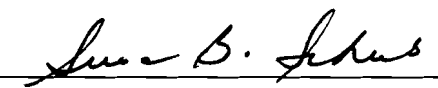
**Nesmith Chevrolet-Buick-GMC-Pontiac, Inc.**

By:  Date: 8-22-07  
Mr. Martin Nesmith  
President

**U.S. Environmental Protection Agency**

By:  Date: 8/10/07  
Beverly H. Banister, Director  
Air, Pesticides and Toxics Management Division,  
Region 4

**APPROVED AND SO ORDERED** this 22<sup>nd</sup> day of October, 2007.

  
Susan B. Schub  
Regional Judicial Officer



# **EXHIBIT A**

## **FINAL SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

**Submitted to**  
**The United States Environmental Protection Agency**  
Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303

**Submitted by**  
**NeSmith Chevrolet, Inc.**  
7334 Highway 280 West  
Claxton, Georgia 30417

**July 18, 2007**

### **I. Introduction**

NeSmith Chevrolet, Inc. has prepared a Supplemental Environmental Project (SEP) proposal in accordance with the EPA Supplemental Environmental Projects Policy effective May 1, 1998 as part of an enforcement settlement for violations of Section 609 of the Clean Air Act.

NeSmith Chevrolet, Inc. will implement, at its own expense, a **Motor Vehicle Air Conditioning (MVAC) System Inspection and Repair Program** to include:

- Performance tests
- Conversions from Freon 12 (and other ozone-depleting substances) to refrigerant 134a (or other non ozone-depleting substances)
- Reseals for leaking units
- Other MVAC repairs
- Advertising

NeSmith Chevrolet, Inc. has also updated its computer system and work order entry functions to ensure that non-certified technicians do not engage in service and repair activities involving MVAC that require certification. The cost for this update was not significant and has not been included in the proposed SEP.

Appendix A contains a complete description of the proposed services/objectives included in the SEP, costs associated with those services and an estimated schedule of completion.

4. **Determinative Requirement.** The type and scope of this project is determined in the settlement agreement and no issue is left for interpretation or negotiation after entry of the CAFO.
5. **Non-EPA Project.** The proposed SEP is not something EPA itself is required by any of its statutes to perform. Nor will this project provide EPA with additional resources to perform an activity for which Congress has specifically appropriated funds. Further, this project is not an expansion of existing EPA programs.
6. **Performance by a Third Party.** This SEP will be performed by the Respondent directly. No third party performance issues are implicated.
7. **Oversight and Drafting Enforceable SEP.** This CAFO will be drafted to ensure that the SEP is completed within a specific timetable, that Respondent will provide documentation to ensure that it was completed properly, and that any failure to complete the SEP as approved will result in stipulated penalties. It will be drafted to conform to all requirements included in the SEP Policy to ensure enforceability.
8. **Failure of SEP and Stipulated Penalty.** If the Respondent fails to complete the SEP as specified in the CAFO, there will be stipulated penalties in the amounts suggested by the drafting guidance issued with the SEP Policy.

On a quarterly base NeSmith Chevrolet will purchase print advertisement in the newspapers of the counties Evans, Tattnall, Bulloch, Bryan, Chatham, Liberty, Long and Wayne until the SEP is complete or until thirty percent of the fund has been utilized. The ads will emphasize educating the communities on "Clean Air" as while as provide an invitation to protect our air and environment through inspection and servicing of their automotive air conditioning systems. NeSmith Chevrolet will also use this portion of the fund to purchase and distribute point of contact material to customers who visit our facilities. These materials will be used to educate our customers and offer an invitation for inspection.

## **II. Costs Incurred by Services**

- An **Air Conditioning System Performance Test** costs NeSmith Chevrolet, Inc. \$59.95, plus the cost of Freon/Refrigerant, to perform.
- **Air conditioning repairs** are performed at a labor rate of \$70.46 per hour, plus parts and Freon/refrigerant needed to repair the leak.
- The **Air Conditioning System Leak Test** costs NeSmith Chevrolet, Inc. \$59.95, plus the cost of Freon/Refrigerant, to perform.
- **Air Conditioning System Conversions/Retrofits** are performed at a labor rate of \$70.46 per hour, plus parts and Freon/refrigerant needed to repair the leak.

## **III. Net Costs Incurred by NeSmith Chevrolet, Inc. through the SEP**

As part of a Settlement with the EPA and in accordance with the Supplemental Environmental Project Policy, NeSmith Chevrolet, Inc. is proposing to perform Motor Vehicle Air Conditioning (MVAC) System Inspections, Repairs and ODS Conversions at their own expense, until the total cost reaches \$20,000.

NeSmith Chevrolet, Inc. has also updated its computer system and work order entry functions to ensure that non-certified technicians do not engage in service and repair activities involving MVAC that require certification. The cost for this update was not significant and has not been included in the proposed SEP.

NeSmith Chevrolet, Inc. will begin implementation of this SEP, as approved by the Environmental Protection Agency and expects to be able to complete the proposed project within twelve to eighteen months from commencement.

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Nesmith Chevrolet-Buick-GMC-Pontiac, Inc., Docket No. CAA-04-2008-1508(b), on the parties listed below in the manner indicated:

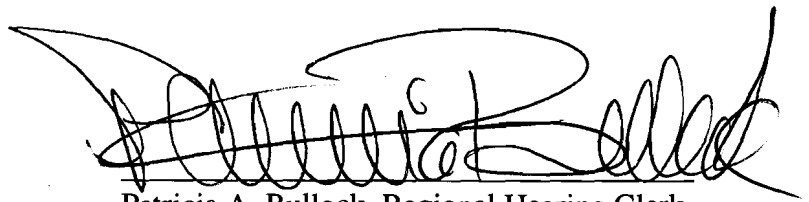
Mr. Martin Nesmith (Via Federal Express)  
Nesmith Chevrolet-Buick-GMC-Pontiac, Inc.  
7334 US Highway 280  
Claxton, GA 30417

Karol Berrien (Via EPA's internal mail)  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Laurie Savoy (Via EPA's internal mail)  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Date:

10-24-07



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection  
Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404)562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi J Wilson on 10/22/07  
(Name) (Date)

in the OEH at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Nesmith Chevrolet Buick GMC Pontiac  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4979 -  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2008 -1508(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |