

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2010 SEP 30 AM 9:30

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)	
)	Docket No. CAA-06-2010-3383
Strata Enterprises, LLC)	
Irving, Texas)	COMPLAINT AND
)	NOTICE OF OPPORTUNITY
RESPONDENT)	FOR HEARING

This Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 113(d) of the Clean Air Act, as amended (“CAA” or “the Act”), 42 U.S.C. § 7413(d), and 40 C.F.R. §§ 22.13 and 22.34(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (“EPA”), Region 6, Dallas, Texas. Based on the following Findings of Fact and Conclusions of Law, the Complainant alleges that Strata Enterprises, LLC (“Strata”) has violated the Act and regulations promulgated under the Act by illegally importing chlorodifluoromethane (“HCFC-22”) into the United States.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Statutory Background

1. Section 605 of the CAA, 42 U.S.C. § 7671d, provides for the phase-out of production and consumption of Class II controlled substances, which are listed at 40 C.F.R. Part 82, Subpart A, Appendix B, and include hydrochlorofluorocarbons (“HCFCs”). Pursuant to 40 C.F.R. § 82.15(b), after January 21, 2003, no person may import Class II controlled substances for which EPA has apportioned baseline production and consumption allowances, whether existing alone or in mixture, unless that person has

unexpended consumption allowances. Exceptions to this ban on imports of Class II controlled substances include shipments of used controlled substances, transshipments, and heels, as well as imports for transformation and destruction. Separate requirements exist for each of these individual exceptions.

2. Effective January 21, 2003, a person is required to expend one consumption allowance to be able to import into the United States one kilogram of a Class II controlled substance for which EPA has apportioned baseline production and consumption allowances. Persons apportioned baseline consumption allowances for HCFC-22 [chlorodifluoromethane (CHF_2Cl)] are listed in 40 C.F.R. § 82.19(a). In cases where a person is receiving a transfer of consumption allowances, they are required to notify EPA of that transfer.

3. The Stratospheric Protection Division ("SPD") of EPA controls and maintains an electronic allowance tracking system that records the quantity of expended and unexpended allowances allocated to named parties. SPD is the only office of the federal government in which such information is maintained.

4. Pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), whenever the Administrator finds any person to have violated or to be in violation of any requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title VI of the Act, the Administrator may issue an administrative penalty order against such person pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

5. Section 113(d)(1) of the Act, authorizes EPA to bring an administrative action for penalties that exceed \$295,000¹ or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

B. Preliminary Statement

6. Strata Enterprises, LLC (“Respondent”) is a Nevada corporation. Strata also does business as Blend Air Manufacturing and Parts Distribution Company (“Blend Air”). All references to “Strata” and “Respondent” in this Complaint also include Strata doing business as Blend Air.

7. Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.3.

8. Respondent owns and operates a facility located at 3367 Conflans, Irving, Texas.

9. Chlorodifluoromethane (“HCFC-22”) is also known as monochlorodifluoromethane. Its chemical formula is CHF_2Cl , and its CAS No. is 75-45-6. It is also referred to as R-22 or by one of its trade names, *e.g.*, Freon® 22.

10. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the violations have occurred more than twelve (12) months ago.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the CAA was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to \$295,000 for violations occurring after January 12, 2009.

C. Violations

11. Paragraphs 1 – 10 are realleged and incorporated by reference.

12. 40 C.F.R. § 82.15(b) provides that effective January 21, 2003, no person may import Class II controlled substances (other than transshipments, heels, or used Class II controlled substances) for which EPA has apportioned baseline production and consumption allowances, in excess of the quantity of unexpended consumption allowances, or conferred unexpended HCFC-141b exemption allowances held by that person under the authority of 40 C.F.R. Part 82, Subpart A at that time in the control period, unless the substances are for use in a process resulting in their transformation or their destruction, or unless they are produced using an exemption granted in 40 C.F.R. § 82.15(f). Every kilogram of excess import constitutes a separate violation under 40 C.F.R. Part 82, Subpart A.

13. “Import”, as defined in 40 C.F.R. § 82.3, means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

- (1) Off-loading used or excess controlled substances or controlled products from a ship during servicing,
- (2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin, and
- (3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

14. On or about the dates listed below, Respondent imported chlorodifluoromethane ("HCFC-22") into the United States through Service Port No.

2402, El Paso, Texas:

- a. February 21, 2008 (Entry No. AF4-0366262-6) – 1040 cylinders containing 14,144 kg of chlorodifluoromethane;
- b. March 25, 2008 (Entry No. AF4-0371077-1) – 350 cylinders containing 4,760 kg of chlorodifluoromethane;
- c. April 4, 2008 (Entry No. AF4-0372401-2) – 480 cylinders containing 6,528 kg of chlorodifluoromethane;
- d. April 4, 2008 (Entry No. AF4-0372402-0) – 760 cylinders containing 10,336 kg of chlorodifluoromethane;
- e. April 4, 2008 (Entry No. AF4-0372404-6) – 250 cylinders containing 3,400 kg of chlorodifluoromethane;
- f. April 9, 2008 (Entry No. AF4-0373010-0) – 500 cylinders containing 6,800 kg of chlorodifluoromethane;
- g. April 11, 2008 (Entry No. AF4-0373113-2) – 320 cylinders containing 4,352 kg of chlorodifluoromethane; and
- h. April 12, 2008 (Entry No. AF4-0373119-9) – 500 cylinders containing 6,800 kg of chlorodifluoromethane.

15. Chlorodifluoromethane ("HCFC-22") is a Class II controlled substance, as defined by 40 C.F.R. § 82.3, and 40 C.F.R. Part 82, Subpart A, Appendix B.

16. The importations listed in Paragraph 14 were not transshipments, heels, or used Class II controlled substances.

17. Respondent does not hold any baseline consumption allowances for chlorodifluoromethane (“HCFC-22”). 40 C.F.R. § 82.19.

18. Respondent does not hold any unexpended consumption allowances for chlorodifluoromethane (“HCFC-22”).

19. The importations listed in Paragraph 14 were not for use in a process resulting in their transformation or their destruction.

20. Therefore, Respondent violated 40 C.F.R. § 82.15(b), by illegally importing chlorodifluoromethane (“HCFC-22”) into the United States.

II. PROPOSED CIVIL PENALTY

21. The proposed civil penalty has been determined in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500)² per day for each violation of the Act.

22. For purposes of determining the amount of any penalty to be assessed, Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration (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 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.

² The amount of penalty that can be assessed under Section 113(d) of the Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation for violations occurring between January 30, 1997 and March 15, 2004, to \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009.

23. 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, together with its relevant appendices, a copy of which is enclosed with this Complaint. This policy provides for a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

24. Attached to this Complaint is a penalty calculation worksheet that explains the reasoning behind the proposed penalty, as required by 40 C.F.R. § 22.14(a)(4)(i). As indicated on the attached worksheet, Complainant proposes to assess a civil penalty in the amount of Two Hundred Sixty-Two Thousand Three Hundred Ten Dollars (\$262,310) against Respondent.

III. QUICK RESOLUTION AND PAYMENT OF PENALTY

25. Pursuant to 40 C.F.R. § 22.18, Respondent may resolve this action at any time by paying the specific penalty proposed in the Complaint and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment.

26. If Respondent pays the proposed penalty in full within thirty (30) days of receipt of the Complaint, no Answer need be filed.

27. In lieu of filing an Answer, and or requesting a Hearing or Informal Settlement Conference, Respondent may pay the assessed civil penalty by cashier's check, certified check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6".

28. Payment shall be remitted in one of three (3) ways: U.S. Postal Service mail (including certified mail and express mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, *e.g.*, Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

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"

PLEASE NOTE: Docket number CAA 06-2010-3383 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and the docket number. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name

and address, the case name, and the docket number. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Ms. Angela Hodges (6RC-ER)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

IV. FAILURE TO FILE AN ANSWER

29. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

30. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

31. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of

liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings sixty (60) days after a Final Default Order is issued.

32. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

33. Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Angela Hodges (6RC-ER)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

34. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.5 and 22.15, including name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. Hearings held on the assessment of civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22.

36. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

VI. SETTLEMENT

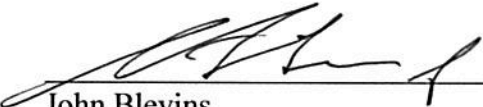
37. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Angela Hodges at (214) 665-2796.

38. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint.

39. Neither assessment nor payment of penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations, and any separate Compliance Order.

9-27-10

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

**PENALTY CALCULATION WORKSHEET
STRATA ENTERPRISES, LLC**

Economic Benefit Component

Profit on Sales to Dynatemp \$200,830³

Gravity Component

Integrity of Regulation \$ 15,000

57,120 kg wrongly imported x 0.055 kg =
3,141.60 x \$0.50/kg \$ 1,571

Integrity of Regulation
(amount left uncured) \$ 15,000

57,120 kg left uncured x 0.055 kg =
3,141.60 x \$0.50/kg \$ 1,571

Size of Violator (net worth \$100,000 - \$1,000,000) \$ 5,000

Gravity Subtotal \$ 38,142

Inflation Adjustment (28.95% upward adjustment) \$ 11,042

Preliminary Deterrence Amount \$ 49,184

Adjustment Factors

Degree of Willfulness or Negligence (25% upward adjustment) \$ 12,296

Degree of Cooperation 0

History of Noncompliance 0

Environmental Damage N/A

TOTAL PROPOSED PENALTY \$262,310

³ May be adjusted if we receive more information about potential economic benefit from Respondent. Total penalty will not exceed \$270,000.

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of September, 2010, the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint, together with a copy of the Clean Air Act Stationary Source Penalty Policy (including Appendix VIII), the memo entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule", the EPA's Small Business Compliance Policy, and the Consolidated Rules of Practice (40 C.F.R. Part 22) were placed in the United States Mail, certified mail, return receipt requested,

7010 1660 0002 1872 0351 addressed to the following:

Joe Larkin
President & Registered Agent
Strata Enterprises, LLC
3367 Conflans
Irving, TX 75061

Angela D. Hodges