



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**

Ronald M. Hagerdon  
Hagerdon, Inc. d/b/a  
Ideal Radiator and Body Company  
13958 Lexington Drive  
Westminster, CO 80020

Re: Complaint and Compliance Order,  
Docket Nos. **CAA-08-2007-0002;**  
**CAA-08-2007-0003**

Dear Mr. Hagerdon:

Enclosed are two documents. The first is an administrative complaint seeking penalties for violation of certain requirements of the regulations implementing the Clean Air Act ("CAA") by Hagerdon, Inc. d/b/a Ideal Radiator and Body Company (the "Respondent"). The second is an administrative order requiring that the Respondent prospectively comply with those same requirements.

Complaint and Notice of Opportunity for Hearing

The Respondent is 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 the Respondent 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,



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Subpart G (Significant New Alternatives Policy Program), prohibit a person from retrofitting motor vehicle air conditioners with the substitute refrigerant "FrigC" without using required unique fittings and required labelling.

By law, the Respondent has the right to request a hearing regarding the matters set forth in this Complaint. The Respondent is encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If the Respondent does 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 its Answer, the Respondent may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not the Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. The Respondent 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 the Respondent's right to request a hearing on any matter to which the Respondent has stipulated in the Consent Agreement.

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

#### Compliance Order

In addition, the Respondent is 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 the Respondent 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 the Respondent to comply with 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix B.

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 the Respondent thirty (30) days in which to request a conference with EPA. Whether or not the Respondent requests a conference, it may confer informally with EPA concerning the alleged violations. The Respondent 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. Bisner*  
*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 25 AM 11:09

IN THE MATTER OF: )  
)  
Hagerdon, Inc. d/b/a ) DOCKET NO. CAA-08-2007-0002  
Ideal Radiator and Body Company )  
2258 California Street ) COMPLAINT AND NOTICE OF  
Denver, CO 80205, ) 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 Hagerdon, Inc. d/b/a Ideal Radiator and Service Company ("Respondent").

2. At all times relevant to this action, Respondent, whose facility is located at 2258 California Street, Denver, Colorado 80205 (the "facility"), was a corporation organized under the laws of the State of Colorado.

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 May 3, 2006, an inspector for the Colorado Department of Health and Environment ("CDPHE") interviewed the owner of two vehicles, a 1989 and a 1990 Chevrolet Suburban, whose motor vehicle air conditioners ("MVACs") had not been working properly since being serviced at Respondent's facility on April 30 and 27, 2005, respectively.

5. "FrigC" (also known as "HCFC Blend Beta" or "FR-12" or "R-416A") is a "substitute" (refrigerant) as defined by 40 C.F.R. § 82.172.

6. On May 3, 2006, the CDPHE inspector referenced in Paragraph 4, above, inspected the 1990 Chevrolet Suburban referenced in that Paragraph and found that its MVAC had been retrofitted with a mixed refrigerant blend, whose identifying characteristics were consistent with "FrigC", without using required unique fittings and required labelling.

7. An invoice from Englewood Auto Repair dated May 2, 2006, shows that the MVAC of the 1989 Chevrolet Suburban referenced in Paragraph 4, above, had been retrofitted with a mixed refrigerant blend, whose identifying characteristics were consistent with "FrigC", without using required unique fittings and required labelling.

8. On May 4, 2006, the CDPHE inspector referenced in Paragraph 4, above, inspected Respondent's facility and found that Respondent had retrofitted MVACs with "FrigC" without using required unique fittings and required labelling.

9. On June 15, 2007, an inspector for U.S. EPA-Region 8 and the CDPHE inspector referenced in Paragraph 4, above, inspected Respondent's facility.

10. During the inspection referenced in Paragraph 9, above, Ronald Hagerdon, the operator of the Respondent's facility, admitted to the inspectors that he had recently used "FrigC" without using required unique fittings or required labelling.



11. The Final Rule memorializing EPA's decision on the acceptability of the substitute "FrigC", and imposing restrictions on its use, is found at 60 Federal Register 31092 (June 13, 1995). The effective date of that rulemaking was July 13, 1995.

#### STATUTORY AND REGULATORY FRAMEWORK

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

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. § 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.

13. 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 B (Substitutes Subject to Use Restrictions and Unacceptable Substitutes), the use of "FrigC" must meet the following conditions:

- a. "FrigC" must be used with unique fittings; and
- b. "FrigC" must be used with detailed labels.

#### DESCRIPTION OF VIOLATIONS

##### COUNT I

14. Respondent retrofitted the MVACs of the vehicles referenced in Paragraph 4, above, with "FrigC" without using required unique fittings and required labelling, in violation of 40 C.F.R. § 82.174(c) and 40 C.F.R. Part 82, Subpart G, Appendix B.

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

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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



and equitable calculation methodology for applying the statutory 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 **\$13,248** 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.

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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.

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. Riener  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

IN THE MATTER OF:

Hagerdon, Inc. d/b/a  
Ideal Radiator and Body Company

DOCKET NOS.:

CAA-08-2007-0002

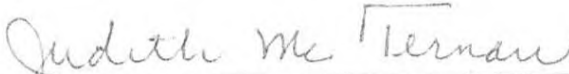
CERTIFICATE OF SERVICE

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:

Ronald M. Hagerdon,  
Registered Agent  
Hagerdon, Inc. d/b/a  
Ideal Radiator and Body Company  
13958 Lexington Drive  
Westminster, CO 80020

9/25/07

Date

  
Judith McTernan