

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. CAA-08-2008-0030

SEP 30 PM 5:53  
FILED  
EPA REGION 8  
HEADING CLERK

IN THE MATTER OF: )  
)  
)  
TRANS-WEST, INC. )  
d/b/a Transwest Trucking )  
7626 Brighton Road )  
Commerce City, Colorado 80022 )  
)  
Respondent. )  
)

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**INTRODUCTION (JURISDICTION)**

1. This civil administrative enforcement action is authorized by Congress in section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d) (1)(B). The rules for this proceeding are 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 ("*Rules of Practice*," ) 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. EPA alleges that TRANS-WEST, INC. d/b/a Transwest Trucking ("Respondent" or "Transwest") has violated the implementing regulations associated with the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 608 of the CAA, 42 U.S.C. § 7671g. Those regulations are found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction). Specifically, EPA alleges Respondent violated the CAA by failing to properly train and certify refrigerant recovery technicians (its employees) who performed MVAC service for consideration and at the direction of Respondent. The CAA authorizes the assessment of a civil penalty for violations of the CAA. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge ("ALJ") to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the *Rules of Practice* for a complete description of what must be in your answer.

**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

**QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty of **\$28,070** proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the *Rules of Practice* for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," 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 Dana J. Stotsky, Senior Enforcement Attorney, at the addresses provided below.

## SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Dana J. Stotsky, Esq., at 1-800-227-8917; extension 6905, or 303-312-6905, or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

## DEFINITIONS

40 C.F.R. part 82 provides the following definitions:

- I. ***Approved refrigerant recycling equipment*** means equipment certified by the Administrator or an organization approved under § 82.38 as meeting either one of the standards in § 82.36. Such equipment extracts and recycles refrigerant or extracts refrigerant for recycling on-site or reclamation off-site. 40 C.F.R. § 82.32(b)
- II. ***Motor vehicle as used in this subpart*** means any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light duty vehicles, and heavy duty vehicles. This definition does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer. 40 C.F.R. § 82.32(c)
- III. ***Motor vehicle air conditioners*** means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant. 40 C.F.R. § 82.32(d)
- IV. ***Person*** means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department or instrumentality of the United States; and any officer, agent or employee thereof. 40 C.F.R. § 82.3
- V. ***Properly using.***
  - (1) ***Properly using*** means using equipment in conformity with the regulations set forth in this subpart, including but not limited to the prohibitions and required practices set forth in § 82.34, and the recommended service procedures and practices for the containment of refrigerant set forth in appendices A, B, C, D, E, and F of this subpart, as applicable. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for

the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner or MVAC-like appliance, including to the motor vehicle air conditioner or MVAC-like appliance from which the refrigerant was extracted. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation.

(2) Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700-93) (which is codified at 40 CFR part 82, subpart F, appendix A, and is available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203). Refrigerant may be recycled off-site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

(3) Notwithstanding any other terms of this paragraph (e), approved refrigerant recycling equipment may be transported off-site and used to perform service involving refrigerant at other locations where such servicing occurs. Any such servicing involving refrigerant must meet all of the requirements of this subpart B that would apply if the servicing occurred on-site.

(4) Facilities that charge MVACs or MVAC-like appliances with refrigerant but do not perform any other service involving refrigerant (i.e., perform "top-offs" only) are considered to be engaged in "service involving refrigerant" and are therefore subject to any and all requirements of this subsection that apply to facilities that perform a wider range of refrigerant servicing. For facilities that charge MVACs, this includes the requirement to purchase approved refrigerant recycling equipment. For facilities that only charge MVAC-like appliances, this does not include the requirement to purchase approved refrigerant recycling equipment, but does include the requirement to be properly trained and certified by a technician certification program approved by the Administrator pursuant to either § 82.40 or § 82.161(a)(5).

(5) All persons opening (as that term is defined in § 82.152) MVAC-like appliances must have at least one piece of approved recovery or recycling equipment available at their place of business.

VI. **Refrigerant** means any class I or class II substance used in a motor vehicle air conditioner. Class I and class II substances are listed in part 82, subpart A, appendix A. Effective

November 15, 1995, refrigerant shall also include any substitute substance. 40 C.F.R. § 82.32(f).

- VII. **Service for consideration** means being paid to perform service, whether it is in cash, credit, goods, or services. This includes all service except that done for free. 40 C.F.R. § 82.32(g).
- VIII. **Service involving refrigerant** means any service during which discharge or release of refrigerant from the MVAC or MVAC-like appliance to the atmosphere can reasonably be expected to occur. Service involving refrigerant includes any service in which an MVAC or MVAC-like appliance is charged with refrigerant but no other service involving refrigerant is performed (i.e., a "top-off").
- (i) Motor vehicle disposal facility means any commercial facility that engages in the disposal (which includes dismantling, crushing or recycling) of MVACs or MVAC-like appliances, including but not limited to automotive recycling facilities, scrap yards, landfills and salvage yards engaged in such operations. Motor vehicle repair and/or servicing facilities, including collision repair facilities, are not considered motor vehicle disposal facilities. 40 C.F.R. § 82.32(h)
- IX. The term "**Motor Vehicle Air Conditioner ("MVAC")**" means any appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. part 82, subpart B. More specifically, MVAC means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle....
- X. The compound **CFC-12** is listed at 40 C.F.R. Part 82, Appendix F, as a Class I, ozone-depleting substance.
- XI. 42 U.S.C. section 7413(d) [**Federal Enforcement**], at subsection (3) provides:
- (3) Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may--
- (A) issue an administrative penalty order in accordance with subsection (d) of this section....

## GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply and are incorporated by this reference into Counts 1 through 5 of this Complaint:

8. Respondent is TRANS-WEST, INC., d/b/a Transwest Trucking (“Respondent”), a Colorado corporation, and is registered to do business in the State of Colorado, and was formed on June 2, 1988, and is identified by the Colorado Secretary of States Office with the identification number: 19881057973.
9. At all times relevant to this action, Respondent conducted business at 7626 Brighton Road, Commerce City, Colorado 80022 (the “facility.”)
10. 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.
11. On November 28, 2007, inspectors for the EPA, with consent of Respondent, conducted an inspection of the facility referenced in Paragraph 9, above.
12. During the inspection referenced in Paragraph 11 above, the EPA inspectors found Respondent’s technicians repaired and serviced motor vehicle air conditioners (“MVACs”) involving refrigerant for consideration.
13. During the inspection referenced in Paragraph 11 above, EPA obtained documents including repair orders that showed MVAC service for consideration and the names of the technicians who were employed by Respondent and who performed the MVAC service involving the refrigerant.
14. During the inspection referenced in Paragraph 11 above, EPA observed that Respondent owned and operated certified refrigerant recovery and recycling equipment.
15. Following the inspection referenced in Paragraph 11 above, Respondent provided EPA with additional documents including repair orders recording MVAC service for consideration involving refrigerants and the identification of those technicians- employees of Respondent- who performed that service.
16. During the inspection referenced in Paragraph 11 above, and via fax and email following the inspections, Respondent provided EPA with all known documents showing that the technicians were properly trained and certified by a technician certification program approved by the Administrator pursuant to 40 C.F.R. §82.40.
17. The documents referenced in Paragraph 16 above included “Service Reports” that include the date of service, the repair order number and a handwritten, detailed description of the repair work performed.

18. The Service Report referenced in Paragraph 17 above includes a technician or employee number indicating the specific technician that performed the work described on each Service Report.
19. Based on documents collected during the inspection and on documents collected from the Respondent subsequent to the inspection, it was determined that at least five (5) of the Respondent's employees and technicians that performed MVAC service for consideration at least once were not properly trained and certified by a technician certification program approved by the Administrator pursuant to 40 C.F.R. §82.40.
20. The five (5) uncertified technicians and the date of service and Respondent's repair order number showing the MVAC service and technician's name are found in the table below:

<b>Date of MVAC Service from Service Report</b>	<b>MVAC Repair Order</b>	<b>MVAC Technician Name</b>	<b>EPA Certification Provided</b>
7/8/2007	093603	Mark Maxey	No
7/11/2007	814306	Chris Dederer	No
7/11/2007	540240	Ignacio Rodriguez	No
7/27/2007	540664	Clayton Williams	No
7/27/2007	540664	John Christopher	No

21. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 609 of the CAA, 42 U.S.C. § 7671h, found at 40 C.F.R. § 82.34(a), no person may perform MVAC service involving the refrigerant unless such person has been properly trained and certified by a technician certification program approved by the EPA Administrator pursuant to 40 C.F.R. § 82.40.
22. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 609 of the CAA, 42 U.S.C. § 7671h, found at 40 C.F.R. § 82.42(b)(2), any person who owns approved refrigerant recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified under 40 C.F.R. § 82.40.
23. Under the regulations implementing the "Stratospheric Ozone Protection" requirements of Subchapter VI, Section 609 of the CAA, 42 U.S.C. § 7671h, found at 40 C.F.R. § 82.42(b)(4), all records required to be maintained pursuant to this section (40 C.F.R. § 82.42(b)) must be kept for a minimum of three years unless otherwise indicated. Entities which service motor vehicle air conditioners for consideration must keep these records on-site.

### **COUNT 1**

24. Respondent's employee and technician, Mr. Mark Maxey, performed MVAC service and repair, for consideration, and involving refrigerants on or about July 8<sup>th</sup>, 2007, without being properly trained and certified.
25. It is a violation of 40 C.F.R. § 82.34(a) for a person to perform MVAC service without being properly trained and certified by a technician certification program approved by the EPA Administrator.
26. Respondent's conduct, by and through the acts or non-acts of its employee and technician Mr. Mark Maxey, on or about July 8<sup>th</sup>, 2007, in performing MVAC service for consideration and without being properly trained and certified by a technician certification program approved by the EPA Administrator, has violated 40 C.F.R. § 82.34(a).

### **COUNT 2**

27. Respondent's conduct, by and through the acts or non-acts of its employee and technician, Mr. Chris Deder, performed MVAC service and repair, for consideration, and involving refrigerants on or about July 11<sup>th</sup>, 2007, without being properly trained and certified.
28. It is a violation of 40 C.F.R. § 82.34(a) for a person to perform MVAC service without being properly trained and certified by a technician certification program approved by the EPA Administrator.
29. Respondent's conduct, by and through the acts or non-acts of its employee and technician Mr. Chris Deder on or about July 11<sup>th</sup>, 2007, in performing MVAC service for consideration and without being properly trained and certified by a technician certification program approved by the EPA Administrator, has violated 40 C.F.R. § 82.34(a).

### **COUNT 3**

30. Respondent's conduct, by and through the acts or non-acts of its employee and technician, Mr. Ignacio Rodriguez, performed MVAC service and repair, for consideration, and involving refrigerants on or about July 13<sup>th</sup>, 2007, without being properly trained and certified.
31. It is a violation of 40 C.F.R. § 82.34(a) for a person to perform MVAC service without being properly trained and certified by a technician certification program approved by the EPA Administrator.

32. Respondent's conduct, by and through the acts or non-acts of its employee and technician Mr. Ignacio Rodriguez on or about July 13<sup>th</sup>, 2007, in performing MVAC service for consideration and without being properly trained and certified by a technician certification program approved by the EPA Administrator, has violated 40 C.F.R. § 82.34(a).

#### **COUNT 4**

33. Respondent's conduct, by and through the acts or non-acts of its employee and technician, Mr. Clayton Williams, performed MVAC service and repair, for consideration, and involving refrigerants on or about July 27<sup>th</sup>, 2007, without being properly trained and certified.
34. It is a violation of 40 C.F.R. § 82.34(a) for a person to perform MVAC service without being properly trained and certified by a technician certification program approved by the EPA Administrator.
35. Respondent's conduct, by and through the acts or non-acts of its employee and technician Mr. Clayton Williams on or about July 27<sup>th</sup>, 2007, in performing MVAC service for consideration and without being properly trained and certified by a technician certification program approved by the EPA Administrator, has violated 40 C.F.R. § 82.34(a).

#### **COUNT 5**

36. Respondent's conduct, by and through the acts or non-acts of its employee and technician, Mr. John Christopher, performed MVAC service and repair, for consideration, and involving refrigerants on or about July 27<sup>th</sup>, 2007, without being properly trained and certified.
37. It is a violation of 40 C.F.R. § 82.34(a) for a person to perform MVAC service without being properly trained and certified by a technician certification program approved by the EPA Administrator.
38. Respondent's conduct, by and through the acts or non-acts of its employee and technician Mr. John Christopher on or about July 27<sup>th</sup>, 2007, in performing MVAC service for consideration and without being properly trained and certified by a technician certification program approved by the EPA Administrator, has violated 40 C.F.R. § 82.34(a).

#### **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 608 of the CAA, 42 U.S.C. § 7671g,

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 June 1, 1994 ("Penalty Policy,") including Appendix X<sup>1</sup>. This policy provides a rational, consistent 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 **\$28,070** 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.

Count 1	\$5,614
Count 2	\$5,614
Count 3	\$5,614
Count 4	\$5,614
Count 5	\$5,614
<b>TOTAL</b>	<b>\$28,070</b>

39. The ALJ 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 in the statute. In this case, the maximum would be \$32,500.

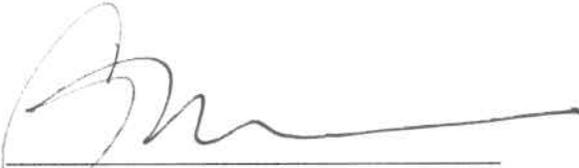
To discuss settlement or ask any questions you may have about this process, please contact Dana J. Stotsky, Senior Enforcement Attorney, at 1-800-227-8917; ext. 312-6905, or at the address below.

---

<sup>1</sup> Appendix X is entitled "Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair and Disposal of Appliances Containing Refrigerant" June 1, 1994.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129

Date: 9/30/08

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Date: Sept 30, 2008

By:   
Dana J. Stotsky, Senior Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Mail Code: 8ENF-L  
Denver, Colorado 80202-1146  
Colorado Bar # 14717  
Phone: (303)-312-6905  
FAX: (303) 312-6953  
[stotsky.dana@epa.gov](mailto:stotsky.dana@epa.gov)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the foregoing PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and with Exhibits, were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Mr. George Eidsness, Registered Agent for  
TRANS-WEST, INC.  
7626 BRIGHTON RD,  
COMMERCE CITY, CO 80022

Date: 9/30/08

By: Judith McTernan  
Judith McTernan