



U. S. ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

RECEIVED  
SEP 19 2012  
EPA ORC WS  
Office of Regional Hearing Clerk

BY HAND

September 19, 2012

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)  
Boston, Massachusetts 02109-3912

Re: *In the Matter of The Moore Company (Fulflex Division)*,  
Docket No: CAA-01-2012-0085

Dear Ms. Santiago:

Attached for filing in the above-referenced matter are the original and one copy of an Administrative Complaint and Notice of Opportunity for Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura J. Beveridge".

Laura J. Beveridge  
Enforcement Counsel

cc: Dana R. Barlow, President, The Moore Company (Fulflex Division)  
Robin Main (Hinkley, Allen, & Snyder LLP)  
Christian Jones (VTDEC)

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF	)	
	)	
THE MOORE COMPANY	)	
(FULFLEX DIVISION)	)	Docket No. CAA-01-2012-0085
	)	
Respondent.	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (ORA18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Copy, by Certified Mail,  
Return Receipt Requested, with  
copy of 40 C.F.R. Part 22:

Dana R. Barlow  
President and Registered Agent  
The Moore Company (Fulflex Division)  
36 Beach Street  
Westerly, RI 02891

Dated: 9/19/2012

  
\_\_\_\_\_  
Laura J. Beveridge  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-3)  
Boston, MA 02109-3912  
Tel (617) 918-1345  
Fax (617) 918-0345

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

**RECEIVED**  
**SEP 19 2012**  
EPA ORC  
Office of Regional Hearing Clerk *WS*

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
The Moore Company (Fulflex Division) )  
32 Justin Holden Drive )  
Brattleboro, Vermont )  
 )  
 )  
 )  
Proceeding under Section )  
113 of the Clean Air Act )  
\_\_\_\_\_ )

Docket No. CAA-01-2012-0085

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR A  
HEARING**

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency – Region 1 (“EPA” or “Complainant”) issues this Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 113(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7413(d), and 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, to The Moore Company (Fulflex Division) (“Fulflex” or “Respondent”).

**II. NATURE OF THE ACTION**

2. The Complaint hereby notifies Respondent that EPA intends to seek civil penalties of up to \$37,500 per day for violations of a federally-enforceable air permit issued under the Vermont state implementation plan (“SIP”) and of federal regulations governing the use of chlorofluorocarbons (“CFCs”) found at 40 C.F.R. Part 82 (Protection of Stratospheric Ozone), Subpart F (Recycling and Emissions Reduction). The Notice of Opportunity for

Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing. In support of this Complaint, EPA alleges the following:

### **III. STATUTORY AND REGULATORY AUTHORITY**

#### **A. Federal Enforcement of Vermont SIP Permits**

3. The State of Vermont has adopted a SIP within the meaning of Section 113(a) of the CAA. 42 U.S.C. § 7413(a).

4. The Vermont SIP, which has been approved by EPA pursuant to CAA Section 110, 42 U.S.C. § 7410, contains various federally-approved portions of the Vermont Air Pollution Control Regulations, including Section 5-501 of Subchapter V which authorizes the Vermont Department of Environmental Conservation ("VTDEC") to issue permits for the construction and/or modification of air contaminant sources.

5. Any provision of the Vermont SIP or permit issued under the SIP is subject to federal enforcement. See 42 U.S.C. § 7413(a). Thirty days after notification of a violation, EPA may (1) order compliance with the SIP or permit; (2) issue an administrative penalty order; or (3) bring a civil action in federal district court. Id.

6. In addition, Sections 113(a) and (d) of the CAA provide for the assessment of civil penalties for violations of any provision of the Vermont SIP or a permit issued under the SIP. See 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4, Table 1 (civil penalties may be assessed of up to \$37,500 per violation per day).

#### **B. Protection of the Stratospheric Ozone Layer**

7. In 1990, Congress enacted Sections 601-618 of the CAA, 42 U.S.C. §§ 7671-7671q ("Subchapter VI"). Subchapter VI aims to protect the stratospheric ozone layer by reducing the emission of ozone-depleting substances, such as CFCs.

8. Ozone-depleting substances subject to Subchapter VI are identified in Section 602 of the CAA, 42 U.S.C. § 7671a, and in Appendices A and B of 40 C.F.R. Part 82, Subpart A.

9. Monochlorodifluoromethane (“HCFC-22”) is listed as a class II substance. 40 C.F.R. Part 82, Subpart A, App. B. HCFC-22 is also known as R-22.

10. Pursuant to Section 608, 42 U.S.C. § 7671g, EPA has promulgated regulations designed to reduce harmful emissions by maximizing the recapture and recycling of listed ozone-depleting substances, such as R-22, during the service, repair, or disposal of appliances and industrial process refrigerant (“IPR”) units covered by the Act. These regulations are set forth in 40 C.F.R. Part 82, Subpart F (“Subpart F”).

11. Subpart F requires owners and operators of appliances, including IPR units, containing more than 50 pounds of listed refrigerant to keep service records documenting the date and type of service as well as the quantity of refrigerant added. 40 C.F.R. § 82.166(k). Proper maintenance of such records ensures that owners and operators can accurately calculate the rate at which a covered appliance is losing refrigerant (“leak rate”), see 40 C.F.R. § 82.152, and determine whether the repair, retrofitting, or replacement requirements set forth in 40 C.F.R. § 82.156 are triggered.

12. Violations of Subchapter VI of the CAA and Subpart F are enforceable pursuant to Section 113(a)(3) of the CAA and subject to the penalty provisions set forth in Section 113(d). 42 U.S.C. § 7413(a)(3) (EPA can order compliance, assess an administrative penalty, or initiate judicial action for violations of Subchapter VI); 42 U.S.C. § 7413(d); 40 C.F.R. Part 19.4, Table 1 (civil penalties may be assessed up to \$37,500 per day of violation).

**C. Joint Determination under Section 113(d) of the CAA**

13. When the first alleged date of a CAA violation occurs more than twelve (12) months prior to the initiation of an administrative action and/or the amount of the penalty sought exceeds \$295,000, EPA and the Department of Justice may jointly determine that an administrative, rather than judicial, forum is appropriate. 42 U.S.C. § 7413(d).

**IV. GENERAL ALLEGATIONS**

14. Fulflex is owned and operated as a division of The Moore Company, which is based in Rhode Island.

15. The Fulflex facility is located in Brattleboro, Vermont, and employs approximately 133 people.

16. Fulflex manufactures and distributes natural and synthetic rubber and elastic tapes, threads, sheets and rings for use in a broad range of personnel care, consumer, and medical/healthcare products.

17. Between December 2009 and November 2011, Fulflex operated a plastic extrusion process.

18. The equipment manufacturing processes housed in the Fulflex facility have the potential to emit air pollutants, including particulate matter, CFCs, hazardous air pollutants (“HAPs”), and other volatile organic compounds.

19. On November 16, 2009, VTDEC issued Fulflex a permit, known as Air Pollution Control Permit to Construct and Operate #AOP-09-024 (“the Permit”), pursuant to the Vermont SIP and Section 5-501 of the Vermont Air Pollution Control Regulations. See Section III.A, supra.

20. Several conditions in the Permit relate to particulate matter.

21. Permit Condition #2 requires Fulflex to control particulate matter from listed processes by installing and operating approved emissions control devices (dust collectors). Permit Condition #2 further requires Fulflex to properly maintain the dust collectors and to run them whenever the respective listed emission source is in operation.

22. Permit Condition #12 establishes emissions limitations for particulate matter for each of the dust collectors. For example, the emissions limitation for particulate matter for Dust Collector #6 is 0.093 pounds per hour.

23. Permit Condition #22 requires Fulflex to develop and implement an operation and maintenance plan (“O&M Plan”) for all filters and cartridges in the dust collection system within 90 days of issuance of the Permit.

24. Permit Condition #23 requires Fulflex to maintain records documenting the total annual hours of outdoor discharge for each dust collector.

25. The Permit also contains conditions related to the plastic extrusion process. Permit Condition #26 requires Fulflex to maintain monthly records of the total quantity of each type of plastic extruded. Permit Condition #26 further requires Fulflex to calculate the total quantity of plastic extruded during a calendar year.

26. In addition, Fulflex operates an IPR unit that has a refrigerant capacity of over 50 pounds and uses R-22.

27. Due to the capacity of the IPR unit and its use of R-22, Fulflex is subject to federal regulations designed to protect the stratospheric ozone layer by maximizing the recapture and recycling of CFCs during the service, maintenance, and repair of appliances. 40 C.F.R. Part 82, Subpart F; 40 C.F.R. Part 82, Subpart A, App. B (identifying R-22 (also known as HCFC-22) as a class II substance).

28. On February 9, 2011, EPA conducted an on-site inspection to evaluate Fulflex's compliance with its Permit and the requirements of the CAA.

29. At the on-site inspection, EPA found numerous permit and regulatory violations.

30. EPA observed that Fulflex was not operating emissions control devices on all listed processes as required by Permit Condition #2.

31. EPA determined that Fulflex's O&M Plan, dated October 29, 2010, was inadequate to ensure proper maintenance of the dust collection system and was not finalized or implemented within 90 days of issuance of the Permit as required by Permit Condition #22.

32. Fulflex was unable to provide EPA inspectors with copies of records documenting the total annual hours of outdoor discharge for each dust collector as required by Permit Condition #23.

33. Fulflex was unable to provide EPA inspectors with records documenting the quantity and type of plastic extruded as required by Permit Condition #26.

34. Fulflex was unable to provide proper service and repair records for the IPR unit as required by 40 C.F.R. § 86.166(k).

35. On May 13, 2011, EPA sent Fulflex a letter pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414, (hereinafter the "114 Letter") requesting additional information about Fulflex's operations and facility. Among other things, the 114 Letter specifically asked Fulflex for records and other information related to compliance with the conditions of its Permit and the regulations set forth in Subpart F.

36. Fulflex's submissions to EPA in response to the 114 Letter failed to demonstrate that Fulflex was in full compliance with either the requirements of its Permit or with Subpart F.



37. The 114 Letter also contained an emissions testing order. See 42 U.S.C. § 7414(a)(1) (authorizing EPA to order emissions testing).

38. In response, Fulflex conducted a stack test on September 13, 14, and 15, 2011, using EPA-approved stack-test protocol. Results from the September 2011 stack test established that emissions of particulate matter for Dust Collector #6 were 0.18 pounds per hour, significantly over the 0.093 pound per hour limitation established by Permit Condition 12 for Dust Collector #6.

39. On April 2, 2012, EPA issued a Notice of Violation and Administrative Order (“NOV/AO”) officially notifying Fulflex that it was in violation of its Permit. 42 U.S.C. § 7413(a)(1) (requiring notification of permit violations). The NOV/AO also contained an administrative order directing Fulflex to comply with the requirements of Subpart F. See 42 U.S.C. § 7413(a)(3) (authorizing EPA to issue administrative orders for violations of Subchapter VI of the CAA).

40. As required by Section 113(a)(1) of the CAA, at least 30 days have elapsed since issuance of the NOV/AO. 42 U.S.C. § 7413(a)(1), (d).

41. Although the date of the first violation alleged herein occurred more than twelve (12) months prior to the initiation of this action, EPA has determined jointly with the Department of Justice that the matter is appropriate for an administrative penalty action under Section 113(d)(1) of the CAA. 42 U.S.C. § 7413(d)(1).

## V. VIOLATIONS

42. Based upon the compliance inspection conducted in February 2011, the September 2011 stack test, and additional information obtained from Fulflex pursuant to Section

114(a)(1) of the CAA, EPA has identified the following violations of the CAA and its implementing regulations:

**First Count – Violation of Permit Condition #2**

43. Complainant hereby incorporates by reference Paragraphs 1 through 42.

44. Permit Condition #2 is a federally-enforceable permit condition. 42 U.S.C. § 7413(a); see also Section III.A & Paragraph 19, supra.

45. Permit Condition #2 requires Fulflex to control particulate matter from listed processes by installing and operating approved emissions control devices (dust collectors). Between February 2011 and September 2011, and possibly during other periods, Fulflex failed to operate approved emission control devices on all listed processes. Accordingly, Fulflex violated Permit Condition #2.

46. Violation of Permit Condition #2 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Second Count – Violation of Permit Condition #12**

47. Complainant hereby incorporates by reference Paragraphs 1 through 46.

48. Permit Condition #12 is a federally-enforceable permit condition. 42 U.S.C. § 7413(a); see also Section III.A & Paragraph 19, supra.

49. The emissions limitation for particulate matter established by Permit Condition #12 for Dust Collector #6 is 0.093 pounds per hour. Results from the September 2011 stack test indicate that emissions of particulate matter for Dust Collector #6 were 0.18 pounds per hour, 94% above the emissions standard imposed by Permit Condition #12. Accordingly, Fulflex violated Permit Condition #12.

50. Violation of Permit Condition #12 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Third Count – Violation of Permit Condition #22**

51. Complainant hereby incorporates by reference Paragraphs 1 through 50.

52. Permit Condition #22 is a federally-enforceable permit condition. 42 U.S.C. § 7413(a); see also Section III.A & Paragraph 19, supra.

53. Permit Condition #22 requires Fulflex to develop and implement an O&M Plan for all filters and cartridges in the dust collection system within 90 days of issuance of the Permit. The O&M Plan submitted to EPA was dated October 29, 2010, over eleven months after the Permit was issued. In addition, EPA determined that the October 2010 O&M Plan was substantively inadequate. Accordingly, Fulflex violated Permit Condition #22.

54. Violation of Permit Condition #22 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Fourth Count – Violation of Permit Condition #23**

55. Complainant hereby incorporates by reference Paragraphs 1 through 54.

56. Permit Condition #23 is a federally-enforceable permit condition. 42 U.S.C. § 7413(a); see also Section III.A & Paragraph 19, supra.

57. Permit Condition #23 requires Fulflex to maintain records documenting the total annual hours of outdoor discharge for each dust collector. Fulflex failed to maintain adequate records of the total annual outdoor discharge for each dust collector. Accordingly, Fulflex violated Permit Condition #23.

58. Violation of Permit Condition #23 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Fifth Count – Violation of Permit Condition #26**

59. Complainant hereby incorporates by reference Paragraphs 1 through 58.

60. Permit Condition #26 is a federally-enforceable permit condition. 42 U.S.C. § 7413(a); see also Section III.A & Paragraph 19, supra.

61. Permit Condition #26 requires Fulflex to maintain monthly records of the total quantity of each type of plastic extruded and annual records of total quantity of plastic extruded per calendar year. Fulflex failed to maintain adequate monthly and annual records of plastic extruded at the facility. Accordingly, Fulflex violated Permit Condition #26.

62. Violation of Permit Condition #26 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Sixth Count – Violation of CAA Subchapter VI  
(Protection of Stratospheric Ozone) & 40 C.F.R. Part 82, Subpart F**

63. Complainant hereby incorporates by reference Paragraphs 1 through 62.

64. 40 C.F.R. § 82.166(k) requires owners and operators of appliances, including IPR units, containing more than 50 pounds of listed refrigerant to keep service records documenting the date and type of service as well as the quantity of refrigerant added.

65. Fulflex owns and operates an IPR unit with a refrigerant capacity of over 50 pounds that uses R-22 (HCFC-22), a class II substance.

66. Fulflex failed to maintain service records for its covered IPR unit that adequately documented the date and type of service and the quantity of refrigerant added as required by 40 C.F.R. § 82.166(k).

67. Accordingly, Fulflex violated Section 608 of Subchapter IV of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F.

68. Violations of Subchapter IV of the CAA and 40 C.F.R. Part 82, Subpart F are subject to civil penalties of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

## VI. PROPOSED CIVIL PENALTY

69. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$32,500 per day per violation for violations occurring after March 14, 2004, and on or before January 12, 2009, and up to \$37,500 per day per violation for violations occurring after January 12, 2009. See 42 U.S.C. § 7413(d)(1)(B); 40 C.F.R. Part 19.4 (Table 1); see also Pub. L. 104-134 (Civil Monetary Inflation Rule).

70. In determining the amount of the penalty to be assessed under Section 113 of the CAA, EPA must take into consideration the size of the violator's 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 violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. See Section 113(e), 42 U.S.C. § 7413(e).

71. To assess a penalty for the alleged violations set forth in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Penalty Policy" ("Penalty Policy"), dated October 25, 1991, a copy of which is enclosed with this Complaint. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component based on the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence

in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. The Penalty Policy provides a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

72. Pursuant to 40 C.F.R. § 22.19, within 15 days after Respondent files its prehearing information exchange, Complainant will specify the proposed penalty and explain how the proposed penalty was calculated. Any proposed penalty in this matter will be developed based upon the best information available to Complainant, but any such penalty may also be adjusted if Respondent is able to establish that the proposed penalty would impair its ability to continue in business by providing Complainant with adequate financial documentation.

73. As required by 40 C.F.R. § 22.14(a)(4)(2), a brief explanation of the penalty sought for each violation is set forth below:

**First Count – Violation of Permit Condition #2**

74. From at least February 9, 2011, to at least September 30, 2011, and possibly during other periods, Fulflex failed to control particulate matter by operating approved emission control devices on all listed processes. Failure to control particulate matter presents a risk to human health and the environment. Numerous scientific studies link exposure to particulate matter to a broad range of respiratory problems, premature mortality, and increased hospitalization. Children, older adults, and people with pre-existing heart and lung disease are particularly vulnerable to the adverse effects of particle pollution. Emission of particulate matter also causes environmental damage when it settles on the ground or water. Settling of particulate matter depletes nutrients in soil, damages forests and farm crops, changes the nutrient balance in large river basins and coastal waters, and increases the acidity of lakes and streams. See

generally, 71 Fed. Reg. 61,144 (Oct. 17, 2006) (final rule revising national ambient air quality standards for particulate matter).

75. Violation of Permit Condition #2 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Second Count – Violation of Permit Condition #12**

76. From at least September 13, 2011, until at least September 15, 2011, and possibly during other periods, emissions of particulate matter from Dust Collector #6 exceeded the emissions standard imposed by Permit Condition #12. Emission of particulate matter in excess of established permit limitations presents a risk to human health and the environment. See Paragraph 74, supra. In the present case, emissions of particulate matter from Dust Collector #6 exceeded the limitation imposed by the Permit by approximately 94 percent.

77. Violation of Permit Condition #12 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

**Third Count – Violation of Permit Condition #22**

78. From February 14, 2010, to July 13, 2012, Fulflex failed to develop and implement an adequate O&M Plan for all filters and cartridges in the dust collection system. An adequate O&M Plan is essential to ensure optimum performance of the dust collection system and, thereby, full compliance with emission limitations for particulate matter imposed by the Permit. As explained in Paragraph 74, supra, emission of particulate matter presents a risk to human health and the environment.

79. Violation of Permit Condition #22 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

#### **Fourth Count – Violation of Permit Condition #23**

80. From at November 16, 2009, to at least June 13, 2011, Fulflex failed to maintain records documenting the total annual hours of outdoor discharge from each dust collector. Maintenance of such records is essential to ensure compliance with the hourly limitations on outdoor discharge in the Permit which, in turn, are intended to restrict emission of particulate matter into the ambient air. As stated above, particulate matter poses a risk to human health and the environment. See Paragraph 74, supra.

81. Violation of Permit Condition #23 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

#### **Fifth Count – Violation of Permit Condition #26**

82. From November 16, 2009, to at least May 20, 2011, Fulflex failed to maintain records documenting the total quantity of each type of plastic extruded per month and the total quantity of plastic extruded per calendar year. Maintenance of monthly and annual records for plastic extruded at the Fulflex facility is essential to ensure and monitor compliance with the Permit and the CAA. Among other things, the recordkeeping requirement set forth in Permit Condition #26 allows the State of Vermont and EPA to estimate the emission of HAPs, including methylene chloride, attributable to the plastic extrusion process. Statutorily listed HAPs are air pollutants that are known or suspected to cause serious health effects, such as cancer, reproductive effects, and/or birth defects, as well as adverse environmental consequences. See e.g., 42 U.S.C. § 7412(b) (listing methylene chloride as a HAP); 40 C.F.R. Subpart 6V, Table 1 (identifying methylene chloride as a probable carcinogen).

83. Violation of Permit Condition #26 constitutes a violation of the CAA subject to a civil penalty of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).



### **Sixth Count – Violation of 40 C.F.R. Part 82, Subpart F**

84. From at least July 24, 2009, to September 21, 2011, and possibly longer, Fulflex failed to maintain service records for its IPR unit that adequately documented the date and type of service as well as the quantity of R-22 added. See 40 C.F.R. §§ 82.166(k). Proper record-keeping enables owners and operators of appliances subject to Subpart F to detect and effectively repair refrigerant leaks in a timely fashion. 40 C.F.R. §§ 82.166(k), 82.152, 82.156. Conversely, failure to maintain proper service records potentially allows ozone-depleting substances to escape into the ambient air without detection. The emission of ozone-depleting refrigerants, like R-22, poses a substantial risk to human health and the environment by adversely affecting the layer of stratospheric ozone that protects the Earth and its inhabitants from harmful radiation.

85. Violations of Subchapter IV of the CAA, 42 U.S.C. §§ 7671-7671q, and 40 C.F.R. Part 82, Subpart F are subject to civil penalties of up to \$37,500 per day. 42 U.S.C. § 7413(a), (d); 40 C.F.R. Part 19.4 (Table 1).

### **VII. OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

86. In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100 (Mail Code ORA18-1)  
Boston, Massachusetts 02109-3912

87. Respondent shall serve copies of the Answer and any subsequent pleadings which Respondent files in this action to the following address:

Laura J. Beveridge, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100 (Mail Code OES04-3)  
Boston, Massachusetts 02109-3912

88. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). See 40 C.F.R. § 22.15 for the required contents of the Answer.

### **VIII. DEFAULT ORDER**

89. Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings thirty (30) days after the default order became final under 40 C.F.R. § 22.27(c).

### **IX. SETTLEMENT CONFERENCE**

90. Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

91. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter,

Respondent should contact Laura J. Beveridge, Enforcement Counsel, at (617) 918-1345.

Pursuant to 40 C.F.R. § 22.5(c)(4), Laura J. Beveridge is authorized to receive service on behalf of EPA.

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square, Suite 100  
Boston, MA 02109-3912

09/18/12  
Date