



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

MAR 26 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. David Popowski, Esq.  
171 Church Street,  
Suite 110  
Charleston, South Carolina 29401

Re: Consent Agreement and Final Order  
In the Matter of McCall's Incorporated of Johnsonville  
Docket No. CAA-04-2012-1511(b)

Dear Mr. Popowski:

Enclosed, please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act matter involving McCall's Incorporated of Johnsonville. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22, and became effective on the date of filing. Please note that pursuant to paragraph 32 of the CAFO, payment of \$30,000 is due within 30 days of the effective date. Further directions concerning the payment are set forth in paragraphs 33 and 34.

Also enclosed, is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceeding" (Notice). This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter, please contact me at (404) 562-9536.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlene J. Tucker".

Marlene J. Tucker  
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION IV  
2012 MAR 26 AM 10:10  
HEARING CLERK

IN THE MATTER OF: )  
)  
McCall's Inc. of Johnsonville, )  
South Carolina )  
394 Lake City Highway )  
Johnsonville, South Carolina 29555 )  
)  
)  
)  
Respondent )  
\_\_\_\_\_ )

Docket Number: CAA-04-2012-1511(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Respondent is McCall's Inc. of Johnsonville, South Carolina, (hereinafter, "Respondent").
2. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of United States Environmental Protection Agency (EPA). The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.
4. Respondent is a company incorporated in the State of South Carolina.
5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Pursuant to Section 605 of the CAA, 42 U.S.C. § 7671d, the Administrator of EPA is authorized to promulgate regulations for the phase-out of production and consumption of class II substances. The implemented regulations, set forth at 40 C.F.R. Part 82, regulate Stratospheric Ozone Protection. The regulations at 40 C.F.R. Part 82, Subpart A establish production and consumption allowances for class I and class II controlled substances.
7. Pursuant to 40 C.F.R. § 82.15(b), effective January 21, 2003, no person may import class II controlled substances for which EPA has apportioned baseline production and consumption allowances. Every kilogram (kg) of excess import constitutes a separate violation of this subpart.
8. 40 C.F.R. § 82.19 includes a table that lists all persons that are apportioned baseline consumption allowances for Hydrochlorofluorocarbon-22 (HCFC-22), HCFC-141b or HCFC-142b.
9. Pursuant to 40 C.F.R. § 82.62, “class II substances” are defined as any substance designated as class II in 40 C.F.R. Part 82, Subpart A, Appendix B.
10. Pursuant to 40 C.F.R. Part 82, Subpart A, Appendix B, HCFC-22 is a designated class II substance.
11. Pursuant to Section 601 of the CAA, 42 U.S.C. § 7661d, the term “consumption” is defined, in part, to include the amount of that substance produced in the United States, plus the amount imported, minus the amount exported.
12. Pursuant to Section 601 of the CAA, 42 U.S.C. § 7661d, the term “import” is defined in part, as “... bring into, to land on or introduce into, or attempt to land on any place subject to the jurisdiction of the United States.”
13. Pursuant to 40 C.F.R. § 82.3 the term “importer” is defined in part, as “... a person who imports a controlled substance or a controlled product into the United States, and the importer of record (listed on U.S. Customs form for imported controlled substances).”
14. Pursuant to Section 607(c) of the CAA, 42 U.S.C. § 761f and 40 C.F.R. § 82.23, a person (transferor) may transfer to any other person (transferee) any quantity of the transferor’s class II consumption allowances, production allowances, export production allowances, or Article 5 allowances for the same type of allowance.
15. Pursuant to Section 113(d) of the CAA, 42 U.S.C § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each day of violation of the CAA that occurred between March 15, 2004, and January 12, 2009. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed.

## II. Factual Allegations

16. Respondent operates a central heating and air conditioning supply distribution business located at 394 Lake City Highway, Johnsonville, South Carolina 29555.
17. On August 2, 2008, Respondent imported 11,400 cylinders (155,040 kg) of HCFC-22 into the Port of Charleston, South Carolina.
18. On or about August 24, 2008, U.S. Customs and Border Protection (CBP) detained the shipment of HCFC-22 described above in paragraph 17, to determine admissibility into the United States. On October 20, 2008, CBP seized the shipment after receiving confirmation from EPA on September 23, 2008, that at the time Respondent did not hold any allowances for the shipment of HCFC-22.
19. On November 7, 2008, Respondent submitted a petition to the CBP for the release of the shipment of HCFC-22. Based on CBP's review of the information, the decision was made to release the shipment contingent upon Respondent's agreement to pay a fine, and export the shipment to a non-contiguous country under CBP supervision.
20. On February 17, 2008, pursuant to 40 C.F.R. § 82.23, Respondent obtained approval from EPA to obtain a transfer of class II consumption allowances.
21. On February 19, 2009, EPA issued an information request letter to the Respondent, pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a).
22. The Respondent submitted a response to EPA's information request on March 3, 2009.
23. At the time the Respondent imported the shipment of HCFC-22 described in paragraph 17 above, Respondent was not listed in the table in 40 C.F.R. § 82.19, as a company who was apportioned baseline consumption allowances for HCFC-22.
24. At the time of the importation of the shipment of HCFC-22 on August 28, 2008, described in paragraph 17 above, the Respondent had not received transfer consumption allowances as required by 40 C.F.R. § 82.23(a).
25. Respondent violated 40 C.F.R. § 82.15(b)(1), by importing 155,050 kg of HCFC-22 without any consumption allowances or transfer allowances.

## III. Consent Agreement

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 15 above, but Respondent neither admits nor denies the factual allegations set forth in paragraphs 16 through 25 above.

27. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.
28. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that, to the best of its knowledge, information and belief, as of the date of its execution of this CAFO, it is in full compliance with all the relevant requirements of 40 C.F.R. Part 82, Subpart A, promulgated under Section 605 of the CAA, 42 U.S.C. § 7671d.
30. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from liability for the violations alleged herein regarding 605 of the CAA, 42 U.S.C. § 7671d, and 40 C.F.R. Part 82, Subpart A. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.
31. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

#### IV. Final Order

32. Respondent shall pay a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000) which shall be paid within thirty (30) days from the effective date of the CAFO.
33. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the following methods to the address identified for the method chosen.

Address for payment submittal using the United States Postal Service:

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

Address for payment submittal using other mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

Contact Person: Natalie Pearson (314) 418-4087

34. At the time of payment, Respondent shall send a separate copy of the check or send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter which shall state that the payment is for the civil penalty owed pursuant to the Consent Agreement and Final Order in the Matter of the McCall's, Inc. of Johnsonville, South Carolina, Docket No. CAA-04-2012-1511(b), to the following persons at the following addresses:

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

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

35. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim an expense or a deduction or a credit for the civil penalty payment made pursuant to paragraph 32.
36. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. The following person is authorized to receive service for EPA in this proceeding:

Ms. Nikki Radford  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9099

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.
41. This CAFO is applicable to all of Respondent's subsidiaries and affiliates.

**The remainder of this page intentionally left blank.**

V. Effective Date

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

**AGREED AND CONSENTED TO:**

**McCall's Inc. of Johnsonville, South Carolina**

By: Carla M. McCall (Signature) Date: 3/14/12  
Name: Carla M. McCall (Typed or Printed)  
Title: Exec. VP + CFO (Typed or Printed)

**U.S. Environmental Protection Agency**

By: Beverly H. Banister Date: 3/23/2012  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division  
Region 4

**APPROVED AND SO ORDERED** this 26<sup>th</sup> day of March, 2012.

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer



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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of McCall's Inc. of Johnsonville, South Carolina, Docket Number: CAA-04-2012-1511(b), to the addressees listed below.

David Popowski, Esq.  
Popowski Law Firm, LLC  
171 Church Street, Suite 110  
Charleston, South Carolina 29401

(via Certified Mail, Return Receipt Requested)

Nicole Radford  
North Air Enforcement Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via EPA's internal mail)

Marlene Tucker  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via EPA's internal mail)

By:



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303  
(404) 562-9511

Date:

3-26-12