

NOTICE OF OPPORTUNITY FOR A HEARING

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

6. 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, and include 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

7. Respondent may resolve this proceeding at any time by paying the specific penalty of \$5,100 proposed in the 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:

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

SETTLEMENT NEGOTIATIONS

8. The EPA encourages resolution of cases through settlement. If you wish to pursue settlement of this matter, you may contact Linda Kato, EPA enforcement counsel, at (303) 312-6852, or via e-mail at kato.linda@epa.gov. ***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

9. *Appliance* is defined in 40 C.F.R. § 82.152 as “any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.”

10. *Small Appliance* is defined in 40 C.F.R. § 82.152 as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

11. *Disposal* is defined in 40 C.F.R. § 82.152 as the process leading to and including the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water.

REQUIRED PRACTICES

12. *40 C.F.R. § 82.156(f)*: Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of any small appliance must either:

(1) Recover any remaining refrigerant from the appliance in accordance with paragraph (g) or (h) of this section, as applicable; or

(2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously. Such verification must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (g) or (h) of this section, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be removed prior to delivery.

13. *40 C.F.R. § 82.166(i)*: Persons disposing of small appliances must maintain copies of signed statements obtained pursuant to § 82.156(f)(2).

14. *40 C.F.R. § 82.166(m)*: All records required to be maintained pursuant to this section must be kept for a minimum of three years unless otherwise indicated. Entities that dispose of appliances must keep these records on-site.

GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply:

15. The EPA has jurisdiction of this matter under Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

16. Respondent is a Montana corporation doing business as Pacific Steel & Recycling. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to regulation.

17. Respondent is in the business of buying air conditioning units, refrigerators, and other small appliances for scrap recycling and is therefore a "person who takes the final step in the disposal process" within the meaning of 40 C.F.R. § 82.156(f). Respondent conducts this business at its Pacific Steel & Recycling facility ("the facility"), located in Billings, Montana.

18. On September 1, 2009, Mr. Matthew Dehart, an authorized EPA inspector, ("the inspector"), conducted an inspection ("the inspection") of Respondent's facility, with the consent of Respondent, to determine compliance with the CAA and its implementing regulations.

19. The inspector introduced himself to Mr. Marshall Knick, the facility manager ("the facility manager") and provided his credentials. The facility manager accompanied the inspector on an inspection of the facility.

20. During the inspection, the inspector observed several appliances with the refrigerant circuitry intact.

21. The facility manager advised the inspector that appliances that contain refrigerants are separated out and not accepted at the facility. The inspector asked the facility manager if there was any paperwork verifying the recovery of refrigerants from the appliances that he observed and was told there was none.

22. On November 4, 2009, the EPA issued a Notice of Violation and Opportunity to Confer ("NOV") to Respondent, advising Respondent that a preliminary review of the information obtained during the inspection indicated a violation of the CAA and its regulations.

23. Respondent (through its counsel) submitted a letter dated November 23, 2009 to the EPA. (This letter is captioned "Settlement Discussions Subject to Rule of Evidence 408.")

24. On February 2, 2010, the EPA issued a Request for Information pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a) to Respondent, requesting, *inter alia*, that Respondent provide copies of statements or contracts from the three years prior that Pacific Steel had relied upon to verify that refrigerants had been evacuated from appliances it had received for disposal.

25. In its response dated March 9, 2010, Respondent attached certification statements and contracts from various sources that had disposed of appliances at the facility, verifying that the appliances did not contain refrigerants. These documents ranged in date from 1996 through 2009. One of the documents was a contract signed by an agent of Stillwater County, Montana, ("Stillwater County") dated approximately November 9, 2009. There were no other documents signed by Stillwater County covering the period prior to November 9, 2009, contained in the attachments.

26. Subsequent to further communications with Respondent, on July 6, 2011, the EPA submitted a second Request for Information to Respondent requesting, *inter alia*, further information regarding Pacific Steel's receipt of scrap metal, including appliances, from Stillwater County.

27. In its response dated August 10, 2011, Respondent advised the EPA that it maintained records of scrap metal, but did not separately maintain records of appliances. It stated that it had accepted 452 loads of scrap metal from Stillwater County between August 1, 2006 and July 6, 2011. According to Respondent, approximately 324 of these loads of scrap metal had been accepted by Pacific Steel from Stillwater County prior to December 31, 2009.

28. In its August 10, 2011 response, Respondent further stated that "Pacific believes a contract was signed by Stillwater County. However, Pacific has not retained or has not located its contracts with Stillwater County prior to 11/9/09. A new contract was signed 11/9/09."

29. Information obtained from Stillwater County demonstrates that during the one-year period between November 2008 and October 2009, just prior to signing a contract with Pacific Steel on November 9, 2009, the County delivered approximately 80 appliances to the facility. Additional appliances may have been delivered from Stillwater County to the facility prior to November 2008.

COUNT I

30. Pursuant to 40 C.F.R. §§ 82.166(i) and 82.166(m), Respondent was required to maintain, on-site, a record or records required under 40 C.F.R. § 82.156(f)(2) for a period of three years, verifying that all refrigerants had been evacuated from appliances it accepted at its facility.

31. Respondent failed to maintain records required under 40 C.F.R. § 82.156(f)(2) for appliances it received from Stillwater County, prior to November 9, 2009.

PROPOSED CIVIL PENALTY

32. 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) 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 the 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.

33. 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 the EPA's "Clean Air Act Stationary Source Civil Penalty Policy" dated June 1, 1994 ("Penalty Policy"), including Appendix X, 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."

34. Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant assesses a penalty of **\$5,100** 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.

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

Date: MAY 29 2012

By: _____

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with attachment, 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:

Marshall Knick, Manager
Pacific Recycling
P.O. Box 893
Billings, MT 59103

May 30, 2012
Date

Judith McTernan
Judith McTernan