UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
BRUCE M. FOLKINS,	)	**DOCKET NO. CAA-3-99-0002**
	)	
	)	
RESPONDENT	)	

ORDER DENYING CROSS MOTIONS FOR ACCELERATED DECISION

The Complaint in this proceeding, issued March 10, 1999, under Section 113(d)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1), alleged, inter alia, that on September 17, 1997, Respondent, Bruce M. Folkins, a natural person residing in Columbia, Maryland, sold, to a Federal Bureau of Investigation (FBI) undercover agent (UCA) two thirty-pound canisters of CFC-12, also known as "R-12", for use as a refrigerant for $900. The sale was arranged in response to a newspaper advertisement which indicated that R-12 refrigerant, used for auto a/c & refrigeration, was available in a 30-pound jug at an identified telephone number, which was allegedly answered by Respondent, Bruce M. Folkins.[1/] The

[1/] Although the memorandum of the interview with Mr. Folkins by federal investigators conducted on September 17, 1997 (C's Pxh 3), quotes Folkins as stating that he placed the ad in the "Penney (continued...)

sale was allegedly in violation of CAA § 608 and 40 C.F.R. § 82.154(m), because the UCA was not certified to purchase CFC-12. Mr. Folkins was allegedly aware of the fact that the CFC-12 was to be used as a refrigerant, that the UCA was not certified to purchase CFC-12 and also of the alleged fact that the person to whom the UCA intended to resell the CFC-12 was not certified to purchase CFC-12.

Count 1 of the complaint, paragraphs 1 through 19, alleged that the sale of CFC-12 to the UCA by Respondent recited above violated CAA § 608 and 40 C.F.R. § 82.154(m). Count II, paragraphs 1 through 19 and 20 through 23, alleged that Respondent did not retain any invoices indicating the name of the purchaser, the date of the sale, and the quantity purchased for any of the sales of CFC-12. This was alleged to be a violation of CAA § 608 and of 40 C.F.R. § 82.166(a). For these alleged violations, it was proposed to assess Respondent a penalty of $15,180.

Respondent, by counsel, filed an answer admitting, in paragraph 1, the averments of paragraphs 1 through 7 of the complaint, which allege, inter alia, the jurisdictional basis of the complaint, that Respondent is a natural person and which quote

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[1/] (...continued)
Saver" in May or earlier of that year, the copy of the ad in the record is apparently from the Washington Post and is undated (C's Pxh 9). The transcript of the initial telephone conversation with Folkins on September 16, 1997, quotes the UCA as stating that "a buddy of his gave it [the ad] to him" and that he guessed the ad was run in June (Exh 1 to C's Motion for Accelerated Decision).

the provisions of 40 C.F.R. § 82.154(m); neither admitting nor denying, in paragraph 2, the averments of paragraphs 8 through 23 of the complaint, which include the factual allegations recited above, upon the ground that the answers may tend to incriminate him; and, denying, in paragraph 3, for lack of information sufficient to form a belief, the averments of paragraphs 24 through 30 of the complaint, which relate to the proposed penalty. Respondent requested a hearing.

By a letter-order, dated September 9, 1999, the parties, failing settlement, were directed to exchange specified prehearing information on or before October 29, 1999. On September 8, 1999, Complainant filed a Motion to Strike Paragraph 2 of the Answer to the Complaint and To Require Respondent to file an Amended Answer ("Motion to Strike"). Complainant argued that the Respondent's blanket assertion of the privilege against self-incrimination with respect to all allegations raised in paragraphs 8 through 23 of the complaint rendered Respondent's answer "fatally inadequate", because it failed to comply with Rule 22.15(b) of the Consolidated Rules of Practice,[2/] which requires that an answer clearly and

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[2/] The Consolidated Rules of Practice were revised, 64 Fed. Reg. 40137, 40176 (July 23, 1999), effective August 23, 1999. Although this proceeding was commenced under the prior rules, proceedings commenced before August 23, 1999, became subject to the revision on August 23, 1999, unless to do so would result in substantial injustice. 64 Fed. Reg. 40138. No substantial change was made to Rule 22.15(b), Contents of the answer, as the rule as revised requires that an answer contain, inter alia, a statement of

(continued...)

directly admit, deny or explain each factual allegation in the complaint of which respondent has any knowledge. Complainant moved for an order striking paragraph 2 of the answer and that Respondent be ordered to file within 30 days of the Order an answer, complying with Rule 22.15(b) (Motion at 2). Respondent did not respond to the motion.

Complainant filed its Prehearing Exchange on October 25, 1999, in advance of the October 29, 1999, date specified by the letter-order of September 9, 1999. By a letter, dated November 1, 1999, Respondent submitted his Initial Prehearing Exchange and an Amended Answer to the Administrative Complaint. Although the amended answer was not accompanied by a motion seeking leave to file such a document, the amended answer appeared to be the relief Complainant was seeking in its motion to strike, and by an order, dated November 9, 1999, the ALJ accepted the amended answer as a complete response to the motion to strike and as an answer complying with Rule 22.15(e).

Paragraph 7 of the complaint is a verbatim recitation of the provisions of 40 C.F.R. § 82.154(m); paragraph 8 alleges that on September 16, 1997, the UCA called the number specified in the mentioned newspaper advertisement for the sale of R-12 and that the

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[2/] (...continued)
the facts which respondent disputes, while the prior rule in this respect required a statement of the facts respondent intends to place at issue.

person who answered the telephone identified himself as Bruce Folkins; paragraphs 9 and 10 allege that during the referenced telephone call, the UCA informed Folkins that the UCA did not have a certification to purchase CFC-12 and that the person to whom the UCA intended to resell the CFC-12 also was not certified to purchase CFC-12; paragraph 11 alleges that during the referenced telephone call the UCA informed Folkins that the CFC-12 the UCA intended to purchase would be used as a refrigerant; and paragraph 12 alleges that on September 17, 1977, the UCA purchased from Folkins two thirty-pound canisters of CFC-12 for $900.00.

Paragraphs 13 through 18 of the complaint concern admissions allegedly made by Folkins when interviewed by federal investigators on September 17, 1997, subsequent to the sale. In paragraph 14, Folkins is alleged to have acknowledged that he was aware of EPA regulations concerning the sale and use of CFC-12; in paragraph 15, Folkins is alleged to have stated that he sold CFC-12 to the UCA knowing that the UCA was not certified to purchase CFC-12; in paragraph 16, Folkins is alleged to have stated that he sold CFC-12 on at least three, but fewer than ten, occasions other than the sale to the UCA on September 17, 1997; in paragraph 17, Folkins is alleged to have stated that he did not ask any of his customers for proof of certification [to purchase or use CFC-12]; and in paragraph 18, Folkins is alleged to have stated that he did not maintain records of any of his sales of CFC-12.

In its amended answer, Respondent denied [the applicability] of paragraph 7 (40 C.F.R. § 82.154(m)) upon the ground that the cited section only applies to the sale of refrigerants to uncertified persons as they relate to the service, maintenance, repair and disposal of appliances; Respondent admitted the allegations of paragraphs 8 and 9 of the complaint, Respondent denied the allegations of paragraph 10 of the complaint asserting that no such conversation ever took place; Respondent denied the allegations of paragraph 11, asserting that there was never a discussion of the intended use; and Respondent admitted the allegations of paragraphs 12 through 18 of the complaint.

On November 9, 1999, the day the ALJ issued an Order accepting Respondent's answer as a complete response to Complainant's motion to strike, Complainant filed a Motion for Accelerated Decision, asserting that it had established a prima facie case that CFC-12 is a regulated refrigerant, that Respondent sold CFC-12 to an undercover FBI agent who was not certified to purchase CFC-12, that Respondent did not retain an invoice of the sale to the FBI agent and invoices for at least three additional sales of CFC-12, and that Complainant was entitled to a penalty amount of $15,180. Although Complainant acknowledged that it had received Respondent's amended answer to the complaint, its motion for accelerated decision was based in part on the premise Respondent had never

filed a reply to the motion to strike.[3/] Complainant cited Rule C.F.R. § 22.19(g)[4/] of the Rules of Practice and requested that an adverse inference be drawn against Respondent for his failure to answer the allegations in paragraphs 8 through 23 of the complaint. Alternatively, Complainant argued that Respondent's attempt to assert his right against self-incrimination against these allegations was in effect an admission of the allegations.

On November 24, 1999, Respondent filed an Opposition to Complainant's Motion for Accelerated Decision and a Motion For Accelerated Decision and/or to Dismiss (Memorandum). Respondent asserts that he is a trained appliance repairman and that he legally came into possession of 30-pound canisters of CFC-12, also known as "R-12". (Memorandum at 1). Knowing that the value of the canisters had increased with the passage of the Clean Air Act, Respondent states that he sought to legally convert this asset to cash. Prior to attempting any sales of the canisters, he allegedly sought to inform himself of the requirements of the CAA in two

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[3/] Although Complainant is correct that the amended answer was not accompanied by an appropriate motion, Complainant is not in a position to complain of this omission because the filing of an amended answer was the very relief requested in its motion to strike. In any event, the matter has been settled by the ALJ's order accepting the amended answer.

[4/] Rule 22.19(g), "Failure to Exchange Information," provides "[w]here a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion: (1) Infer that the information would be adverse to the party failing to provide it . . .."

ways: firstly, by visiting a local retailer, BJ's Wholesale Club, who held itself out as a legitimate marketer of the product; and secondly, by checking the entire text of the applicable regulation, specifically, Subpart F-Recycling and Emissions Reduction - 40 C.F.R. Part 82-Protection Of Stratospheric Ozone.

Prominently on display at BJ's Wholesale Club was a sign reading:

> It is a violation of Federal Law to sell canisters of Class I or Class II refrigerant of less than 20 pounds of such refrigerant to anyone who is not properly trained and certified to operate approved refrigerant recycling equipment.[5/]

Respondent says that this sign accurately sets forth the language of 40 C.F.R. § 82.42(c). It should be noted that § 82.42 is in Subpart B-Servicing of Motor Vehicle Air Conditioners-of Part 82 and that § 82.42(c) provides that any person who conducts any retail sales of a class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner, and which is in a container of less than 20 pounds of refrigerant, must prominently display the mentioned sign. It should also be noted that the prohibition on the sale or distribution of any class I or class II substance suitable for use as a refrigerant on motor vehicle air conditioning systems, other than a person performing service for consideration on motor vehicle air conditioning systems

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[5/] Emphasis added. The version of the sign in the regulation, 40 C.F.R. § 82.42(c), uses the word "containers" rather than canisters.

in compliance with this section [CAA § 609], is limited to containers of less than 20 pounds of such refrigerant by CAA § 609(e), 42 U.S.C. § 7671h(e).

Additionally, Respondent quotes the language of 40 C.F.R. §§ 82.150(a) and (b), which are in Subpart F-Recycling and Emissions Reduction, and which provide:

> **§ 82.150 Purpose and scope**
> (a) The purpose of this subpart is to reduce the emissions of class 1 and class II refrigerants to the lowest achievable level during the service, maintenance, repair, and disposal of appliances in accordance with section 608 of the Clean Air Act.
>
> (b) This subpart applies to any person servicing, maintaining, or repairing appliances, except for motor vehicle air conditioners. This subpart also applies to persons disposing of appliances, including motor vehicle air conditioners. In addition, this subpart applies to refrigerant reclaimers, appliance owners, and manufacturers of appliances and recycling and recovery equipment

Respondent argues that no violation of the CAA occurred, because the CFC-12 that he sold to the UCA was suitable for use as a refrigerant in a motor vehicle air conditioner and was in a container larger than 20 pounds.[6/] Respondent asserts that the transcript of the conversation with the UCA reveals that the intended use was for motor vehicle air conditioning. Reading the

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[6/] Memorandum at 3. The Memorandum of the Interview with Folkins conducted by federal investigators on September 17, 1997 (Exh 3 to C's Motion) quotes Folkins as stating, based on the sign at BJ's Wholesale Club, that he understood that proof of certification was only required if the containers were less than 20 pounds.

documentation and transcripts in the light most favorable to Complainant, Respondent says that the evidence fails to show that he took any action, or made any statement, which was not allowable by the CAA. Therefore, Respondent argues that he is entitled to judgment in his favor as a matter of law and to dismissal of the complaint.

On November 30, 1999, Complainant filed a Sur Reply to Respondent's Opposition to Complainant's Motion for Accelerated Decision and Reply to Respondent's Motion for Accelerated Decision and/or to Dismiss ("Reply"). Complainant points out that the parties agree that there is no genuine issue of material fact and that an accelerated decision is appropriate (Reply at 2). Complainant emphasizes that Respondent has admitted paragraphs 1 through 6, 8 and 9, 12 through 18 and 22 of the complaint. Regarding Respondent's assertions of how he came into possession of CFC-12, of the sign he observed during a visit to "BJ's Wholesale Club" and of his efforts to familiarize himself with the regulations, Complainant points out that these assertions are not supported by documentation or affidavits. (Reply at 4). Moreover, Complainant says that these representations fail to refute or rebut any of the documentary evidence and certified statements presented by Complainant in its motion for accelerated decision or the facts alleged in those paragraphs of the complaint which Respondent has admitted.

If taken at face value, Complainant says that Respondent's representations might support what it characterizes as a "strawman argument", namely, that Respondent did not violate 40 C.F.R. § 82.42, which is in Subpart B of Part 82. Complainant points out that Respondent was not and could not be charged with a violation of Subpart B, because that section only applies [to CFC-12] in containers of less than 20 pounds (Reply at 5). Complainant emphasizes that Respondent was charged with a violation of Subpart F, which applies to all sizes of containers of CFC-12, and argues that Respondent failed to present any evidence to contradict its evidence that Subpart F controls this proceeding.

DISCUSSION

The regulation which Respondent is charged with violating, 40 C.F.R. § 152(m), provides in pertinent part that "(e)ffective November 14, 1994, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance for use as a refrigerant to any person unless:...." [7/] Consistent with this

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[7/] Section 82.32(f), which is in Subpart B applicable to servicing of motor vehicle air conditioners, provides: (f) **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, 1985, refrigerant shall also include any substitute substance. Section 82.3 provides that class I refers to controlled substances listed in appendix A to this subpart and that class II refers to controlled substances listed in appendix B to this subpart. Consistently with CAA § 602, the mentioned appendices merely list (continued...)

provision, paragraph 11 of the complaint alleges that during the September 16, 1997 call, the UCA advised Respondent that the CFC-12 he intended to purchase would be used as a refrigerant. Paragraph 5 of Respondent's amended answer denies this allegation, asserting that there was never a discussion of intended use. The transcript of the telephone conversation between the UCA and Folkins supports this assertion as there is no indication that intended use was mentioned (Exh 1 to C's Motion). The regulation which Respondent is charged with violating (40 C.F.R. § 82.154(m)) clearly provides that the class I or class II substances which are the subject of the prohibition must be "for use as a refrigerant" and evidence that the CFC-12 sold by Mr. Folkins was to be used as a refrigerant is an essential element of Complainant's case.[8/] While Complainant apparently regards it as self-evident that the CFC-12 was to be used as a refrigerant, the regulation as written does not support the premise that refrigeration is the only use of CFC-12. Complainant has, therefore, failed to establish a prima facie case

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[7/] (...continued)
class I and class II substances and isomers thereof and do not list uses such as refrigeration.

[8/] The preamble to the regulation, 58 Fed. Reg. 28664, indicates that uses of class I and class II substances, in addition to air conditioning and refrigeration, include solvents, foam blowing, and fire control.

and under established principles, the complaint is subject to dismissal.[9/]

It is recognized that might be argued that the advertisement for "R-12 Refrigerant" and the UCA's reference to R-12 refrigerants at the opening of his conversation with Mr. Folkins[10/] together with the fact that refrigeration is the most likely and the most common use of R-12 are sufficient to justify an inference that the intended use of the R-12 sold by Folkins was refrigeration. The rule is, however, that upon summary judgment all reasonable inferences from the facts must be drawn in the manner most favorable to the nonmovant, Respondent at this juncture. See, e.g., In re Peter C. Varrasso, 37 F.3d 760 (1st Cir. 1994) and Igor Azrielli et al. v. Cohen Law Offices et al., 21 F.3d 512 (2nd Cir. 1994). Under these circumstances, the complaint would be dismissed on Respondent's motion except that Complainant is entitled to specific notice of the deficiency in its proof and it is not clear that Complainant realizes its peril. Rule 22.20(a) (supra note 9) clearly authorizes the ALJ to require the submission of additional

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[9/] Rule 22.20(a) provides in pertinent part that: The Presiding Officer, upon motion of respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

[10/] The transcript of the telephone conversation between the UCA and Folkins indicates that the UCA opened the conversation by stating: "I'm calling about an ad I saw in the paper about some R-12 refrigerants you had."

evidence in ruling on motions for accelerated decision. Moreover, the rule is that as to an issue upon which plaintiff has the burden of proof at trial, plaintiff, in order to avoid summary judgment, must come forth with evidence of a genuine issue that would be sufficient to find for plaintiff on that issue at trial. Azrielli, supra.

It is also recognized that Respondent's assertion that the intended use of the CFC-12 was for motor vehicle air conditioning might be regarded as an admission that the intended use was as a refrigerant. Any such admission would, however, be limited to use as a refrigerant in MVACs and, although § 82.32(a) defines refrigerant as any class I or class II substance used as a refrigerant in a MVAC and § 82.150(a) refers to class I and class II refrigerants [used in appliances], there is no evidence in the record that CFC-12 is also used in appliances. In this regard, the purpose of subpart F, which Respondent is accused of violating, is to reduce emissions of class I and class II refrigerants to the lowest achievable levels during service, repair or disposal of appliances (ante at 9-10). While there is no definition of refrigerant in subpart F comparable to that in subpart B for MVACs (supra note 7), the definition of "appliance" in § 601 of the Act as in part "any device which contains and uses a class I or class

II substance as a refrigerant" [11/] indicates that the definition of refrigerant for appliance purposes was intended to be at least as extensive as the definition of refrigerant for MVACs. Be that as it may, it is incumbent on Complainant to come forth with evidence admissible at trial that the UCA informed Folkins that the CFC-12 he wished to purchase would be used as a refrigerant or that it was understood that it would be so used. Complainant will be given an opportunity to supply such evidence prior to a final ruling on Respondent's motion to dismiss.

Examination of the transcript of the conversation between the UCA and Folkins, the summary of the interview of Folkins by federal investigators conducted on September 17, 1977 (Exh 3 to C's motion), and the declarations of Wayne T. Corpening, who purchased the CFC-12 from Folkins and James W. Brown III, an EPA investigator, and one of the agents who interviewed Folkins subsequent to the sale, do not support Respondent's assertion that the intended use of the CFC-12 was motor vehicle air conditioning. Instead, these documents, as indicated previously, show that intended use was not discussed.

Respondent is accused of violating § 82.154(m) by the sale of a class I or class II substance for use as a refrigerant to a

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[11/] CAA § 601(1) provides: The term "appliance" means any device which contains or uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

purchaser who was not certified. Section 82.154(m) is in subpart F-Recycling and Emission Reduction and is not applicable to motor vehicle air conditioners except in the case of disposal (§ 82.150(b), ante at 9-10). Complainant concedes that Respondent was not and could not be charged with a violation of Part 82, Subpart B applicable to the servicing of motor vehicle air conditioners because the prohibitions in that subpart (§ 82.34(b)), are, in accordance with the statute, only applicable to class I or class II substances suitable for use as a refrigerant in motor vehicle air conditioners and which are in containers of less than 20 pounds. Complainant maintains that the section Respondent is accused of violating, § 82.154(m), is applicable to all sizes of containers of any class I or class II substances and, in effect, that whether the CFC-12 sold by Folkins was intended for use in motor vehicle air conditioners is not relevant. An immediate problem with this contention is that § 82.154(m) is in subpart F which by the express language of § 82.150(b) is not applicable to motor vehicle air conditioners except for disposal. Moreover, the asserted extension of the restriction on the sale of any class I or class II substance to any size of container, in effect overriding the less than 20-pound container limitation applicable to MVACs contained in CAA § 609(e) and 40 C.F.R. § 82.34(b), appears only in the preamble.[12/]

[12/] The Agency relies on the following language from the preamble: Based on comments supporting a sales restriction, The (continued...)

Apropos the foregoing, it is noted that the Agency opined that motor vehicle air conditioners are included within the scope of the term "appliance." 58 Fed. Reg. 28660, 28664. If this is so, it is curious that Congress chose to deal with appliances and MVACs in separate sections of the Act, § 608 being concerned with the service, repair, or disposal of appliances and industrial process refrigeration and § 609 being concerned with servicing MVACs. Considering motor vehicle air conditioners as appliances within the statutory definition (supra note 11), requires including motor vehicle air conditioners within the scope of the term "any air conditioner" and ignoring the limiting language for "household or commercial purposes". While there is no definition of motor vehicle air conditioner in the Act, that term is defined in § 82.32(d) of the regulation as meaning "mechanical vapor compression

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[12/] (...continued)
Agency believes restricting sales of refrigerant to only certified technicians is necessary to ensure that all technicians are properly trained and in compliance with this regulation.

In order to ensure that only qualified individuals handle refrigerant, the Agency is establishing a sales restriction on refrigerant until (sic) similar to that required under section 609. The Act made it unlawful, effective November 15, 1992, for any person to sell or distribute, or offer for sale or distribution, any class I or class II substance suitable for use as a refrigerant in a motor vehicle air conditioning system and that is in a container with less than 20 pounds of refrigerant except to certified technicians. EPA has reviewed the success of this sales restriction and believes that the dangers associated with the release of CFCs and HFCs into the atmosphere warrants (sic) extending the sales restriction to all containers (regardless of size) of any class I or class II refrigerant. Restricting the sale of refrigerants will ensure compliance with the regulations and aid in enforcement. 58 Fed. Reg. 28660, 28697 (May 14, 1993).

refrigeration equipment used to cool the driver's or passenger compartment of any motor vehicle." It is clear that MVACs are not used for household purposes and some idea of the scope of the term "commercial purposes" is provided by the definition of "commercial refrigeration" in § 82.152 as meaning, "for the purposes of § 82.156(i) [repair of leaks], the refrigeration appliances utilized in the retail and cold storage warehouse sectors." Motor vehicle air conditioners can be fitted within this concept, if at all, only with great difficulty.

Challenges to the validity of the regulations must, of course, be heard in another forum and the point of the foregoing is not to question the validity of the regulations, but to emphasize that making substantive changes to regulations, which on their face are not applicable to MVACs, by obscure notices in voluminous preambles to the regulations is difficult to square with the requirement of fair notice. It is well settled that a penalty may not be imposed for violation of a regulation if the regulation fails to give fair notice of the conduct prohibited or required. See, e.g., Rollins Environmental Services, Inc. v. EPA, 937 F.2d 649, 652 (D.C. Cir. 1991); General Electric Company v. U.S. EPA, 53 F.3d 1324 (D.C. Cir. 1995); and CWM Chemical Services, Inc. et al., TSCA Appeal No. 93-1, 6 E.A.D. 1 (EAB, May 15, 1995).

In view of the foregoing. Respondent will be given an opportunity to demonstrate that the intended use of the CFC-12 sold to the UCA was motor vehicle air conditioning or, at a minimum, that there is a triable issue as to whether the intended use was motor vehicle air conditioning. If Respondent is able to demonstrate at the hearing that the intended use of the CFC-12 sold by Folkins was MVACs or that it is highly unlikely that there is any other use for CFC-12, I remain to be persuaded that Complainant may exact a penalty for violation of a regulation which is expressly inapplicable to MVACs except for disposal.

ORDER

1. The parties' cross motions for accelerated decision are denied.
2. Within 15 days of the date of this order Complainant shall submit evidence in the form of affidavits or otherwise that the UCA informed Folkins that the CFC-12 he wished to purchase was intended for use as a refrigerant, that it was understood that it would be so used, or that the nature of CFC-12 is such that any use other than refrigeration is highly unlikely.

3. Within 15 days of the date of this order, Respondent shall submit evidence in the form of affidavits or otherwise that the UCA and Folkins understood that the CFC-12 purchased by the UCA was intended for use in MVACs or that any use other than MVACs was highly unlikely.

Dated this 28th day of January 2000.

Original signed by undersigned
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Spencer T. Nissen
Administrative Law Judge