

**UNITED STATES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the matter of:	:	U.S. EPA Docket No.
	:	CAA-HQ-2024-8443
	:	
USA Wholesale Lubricant, Inc.	:	
Respondent	:	
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	:	
	:	
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**AMENDED ADMINISTRATIVE COMPLAINT & NOTICE OF OPPORTUNITY FOR
HEARING**

I. INTRODUCTION

1. This Amended Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), for violations of the American Innovation and Manufacturing Act of 2020 (“AIM Act”), 42 U.S.C. § 7675, the Hydrofluorocarbon (“HFC”) Allocation Regulations at 40 C.F.R. § 84, Subpart A, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.
2. Complainant is the Director, Mary E. Greene, of the Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, EPA, who is authorized by lawful delegation from the Administrator of the EPA to institute civil administrative penalty assessment proceedings under Section 113(d) of the CAA, 42 U.S.C.

§ 7413(d). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redefinition 7-6-A (September 11, 2015); Office of Civil Enforcement Redefinition 7-6-A (September 11, 2015).

3. The Respondent in this action is USA Wholesale Lubricant, Inc. (“Respondent”). On information and belief, Respondent is a company incorporated in California with its principal business offices located in San Jose, California. Respondent is a wholesaler of engine lubricants, including motor oil, selling to retail customers operating throughout the State of California.
4. Respondent is a person under Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
5. Respondent is hereby notified that Complainant alleges that Respondent violated the provisions identified herein and seeks the assessment of a civil penalty. This Complaint also provides notice of Respondent’s opportunity to request a hearing.

II. JURISDICTION

6. This action is brought under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice.
7. An Administrative Law Judge shall serve as the Presiding Officer in this proceeding until an initial decision becomes final or is appealed. 40 C.F.R. §§ 22.3(a), 22.4, 22.16(c).
8. The Administrator of the EPA may issue an administrative penalty order assessing a civil penalty in cases where the first alleged date of violation occurred no more than twelve months prior to initiating the administrative action. Additionally, the Administrator and the United States Department of Justice Attorney General may jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1).

9. The Administrator of the EPA may administratively assess a civil penalty of up to \$57,617 per day of violation with a maximum of \$460,926 for violations that occurred after November 2, 2015, and penalties are assessed on or after December 27, 2023. CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4 Table 1. The Administrator and the United States Department of Justice Attorney General may jointly determine that a matter involving a higher penalty than \$460,926 is appropriate for an administrative penalty action. CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1); 40 C.F.R. §§ 19.4 Table 1.
10. The EPA and the United States Department of Justice Attorney General jointly determined that although this matter involves alleged violations that occurred more than one year before the initiation of this proceeding, it is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).
11. Pursuant to 40 C.F.R. § 22.1(a)(2), the Consolidated Rules of Practice govern administrative adjudicatory proceedings for the assessment of any administrative civil penalty under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

III. GOVERNING LAW

12. This proceeding arises under the AIM Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder.
13. The EPA is authorized to enforce the AIM Act and any regulation promulgated thereunder pursuant to the federal enforcement authorities established by Section 113(a) of the CAA, 42 U.S.C. § 7413(a). 42 U.S.C. § 7675(k)(1)(C).
14. EPA regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase-down HFC production and consumption.

15. Pursuant to 40 C.F.R. § 84.5(b)(1)(i), “no person may import bulk regulated substances, except ... [by expending, at the time of the import] ... , consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported”

16. Pursuant to 40 C.F.R. § 84.5(b)(2) (2022)¹: “[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section”

17. Definitions:

- a. “Allowance” means a “limited authorization for the production or consumption of a regulated substance established under subsection (e) of Section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (the AIM Act). An allowance allocated under subsection (e) of Section 103 in Division S of the AIM Act does not constitute a property right.” 40 C.F.R. § 84.3.
- b. “Bulk” means “a regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.” 40 C.F.R. § 84.3.

¹ The regulations at 40 C.F.R. § 84 Subpart A were subsequently changed after the alleged violations in this Complaint took place. If a version of the regulations was different in 2022 from the current version of the regulations, it is cited as “2022” in this Complaint.

- c. “Consumption Allowances” means “a limited authorization for the production or consumption of a regulated substance established under subsection (e) of section 103 of the AIM Act. A person’s consumption allowances are the total of the allowances obtained under 40 C.F.R. § 84.11 or 40 C.F.R. § 84.15 as may be modified under 40 C.F.R. §§ 84.17 (availability of additional consumption allowances), 84.19 (transfer of allowances), and 84.35 (administrative consequences).” 40 C.F.R. § 84.3.
- d. “Exchange value” means the “value assigned to a regulated substance in accordance with AIM Act subsections (c) and (e), as applicable, and as provided in Appendix A to 40 C.F.R. Part 84.” 40 C.F.R. § 84.3.
- e. “Exchange value equivalent” (EVe) means “the exchange value-weighted amount of a regulated substance obtained by multiplying the mass of a regulated substance by the exchange value of that substance.” 40 C.F.R. § 84.3.
- f. “Import” means to “land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the custom laws of the United States. Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.” 40 C.F.R. § 84.3 (2022).
- g. “Importer” means “[A]ny person who imports a regulated substance into the United States. ‘Importer’ includes the person primarily liable for the payment of

any duties on the merchandise or an authorized agent acting on his or her behalf.

The term also includes:

- (1) The consignee;
- (2) The importer of record;
- (3) The actual owner; or
- (4) The transferee, if the right to draw merchandise in a bonded warehouse

has been transferred.” 40 C.F.R. § 84.3.

- h. “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. § 84.3.
- i. “Regulated substance” means “[A] hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3).” 40 C.F.R. § 84.3.

18. The importer of record is required to submit an advance notification report for each shipment of regulated substances imported no later than 14 days prior to importation. 40 C.F.R. § 84.31(c)(7) (2022).²

² As previously discussed in footnote 1, 40 C.F.R. § 84.31(c)(7) (and other sections) has since been modified to require that the importer of record submit an advance notification report “no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation,” effective September 18, 2023 (see 88 Fed. Reg. 46,836, 46,897 (July 20, 2023)).

19. Within 45 days after the end of each quarter, an importer of record of a regulated substance must submit to the relevant Agency official a report containing the requirements listed in 40 C.F.R. § 84.31(c)(1)(i) - (ix). 40 C.F.R. § 84.31(c)(1).
20. 40 C.F.R. § 84.5(b)(1) (2022) states that “no person may import bulk regulated substances, except: (i) by expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported.”
21. A current list of regulated substances, their chemical formulas, and their exchange values can be found in Appendix A to 40 C.F.R. Part 84. *See* 40 C.F.R. § 84.3; 40 C.F.R. Part 84 Appendix A.
22. The compound HFC-134a is listed as a regulated substance and has an exchange value of 1,430. 40 C.F.R. Part 84, Appendix A.
23. “Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).” 40 C.F.R. § 84.5(b)(2) (2022).
24. 40 C.F.R. § 84.5(b)(6) (2022) states that “every kilogram of bulk regulated substances imported ... constitutes a separate violation of this subpart.”
25. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator of the EPA to assess a civil administrative penalty of not more than \$25,000 per day of violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil administrative penalty has

subsequently been raised to \$57,617 per day of violation. 40 C.F.R. § 19.4, Table 1.

IV. ALLEGED VIOLATIONS OF LAW

Count I: Importation of bulk regulated substances without expending consumption or application-specific allowances.

26. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
27. Respondent is a “person,” as that term is defined under 40 C.F.R. § 84.3.
28. Respondent is an “importer,” as that term is defined under 40 C.F.R. § 84.3.
29. On or about June 5, 2022, according to Customs Entry Number AY0-0118760-0, Respondent imported approximately 15,640 kg of HFC-134a, contained in containers for the transportation of that substance, through the port of San Francisco, California (“Subject HFCs”).
30. The Subject HFCs constitute a “bulk” substance, as that term is defined under 40 C.F.R. § 84.3.
31. As also stated in paragraph 22, HFC-134a is a regulated substance. 40 C.F.R. Part 84, Appendix A.
32. The Subject HFCs constitute a “regulated substance,” as that term is defined under 40 C.F.R. § 84.3.
33. Using the formula provided by 40 C.F.R. § 84.3, the EPA calculated the total metric tons of EVe (MTEVe) for this shipment to be approximately 22,365.2.
34. The EPA calculated the MTVEe for the bulk regulated substances imported by Respondent by multiplying 15,640 kg (the mass of the regulated substance) by 1,430 (the exchange value

of HFC-134a) and dividing the product by 1,000 to obtain metric tons. See Paragraph 22 and Paragraph 29. The result is that 15,640 kg of HFC-134a is equivalent to 22,365.2 MTEVe.

35. Thus, Respondent was required to possess 22,365.2 consumption or application-specific allowances at the time of import of the Subject HFCs in Customs Entry Number AY0-0118760-0.

36. Respondent did not possess or expend any allowances when importing these bulk regulated substances, in violation of 40 C.F.R. § 84.5(b)(1).

37. Pursuant to 40 C.F.R. § 84.5(b)(6) (2022), every kilogram of bulk regulated substances imported constitutes a separate violation of 40 C.F.R. § 84.5(b).

38. Therefore, Respondent's failure to possess or expend any allowances when importing 15,640 kg of bulk regulated substances constitutes 15,640 violations of 40 C.F.R. § 84.5(b)(1).

Count II: Failure to submit advance notification reports.

39. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.

40. Respondent imported the Subject HFCs by marine vessel.

41. Respondent filed an advance notification report for the import of the Subject HFCs on or about June 2, 2022, three days prior to importation.

42. Respondent violated 40 C.F.R. § 84.31(c)(7) (2022) by failing to submit advance notification reports for the Subject HFCs no later than 14 days prior to importation.

Count III: Failure to submit quarterly reports.

43. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.

44. Respondent failed to submit a report to the EPA with information relating to the Subject

HFCs that the company imported in the second quarter of 2022.

45. Respondent violated 40 C.F.R. § 84.31(c)(1) by failing to submit a report to the EPA that describes the regulated substances imported during the second quarter of 2022 within 45 days after the end of the second quarter.

V. PROPOSED CIVIL PENALTY

46. Complainant seeks an administrative penalty against the Respondent for the approximately 15,640 violations alleged in Count 1, the violation alleged in Count 2, and the violation alleged in Count 3 of the Alleged Violations of Law.
47. Complainant makes no specific penalty demand in this Complaint, as authorized by 40 C.F.R. § 22.14(a)(4)(ii).
48. As detailed above, Respondent is subject to a civil administrative penalty of not more than \$57,617 per day for each violation of 40 C.F.R. § 84.5(b)(1). CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4.
49. Complainant reserves its right to seek the maximum civil penalty authorized by the CAA.
50. In determining the amount of the civil penalty in this matter, the CAA requires that the EPA take into account certain penalty factors, namely “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.” CAA § 113(e), 42 U.S.C. § 7413(e)(1).
51. Regarding the alleged violations, Complainant proposes to account for the CAA’s penalty factors by using the “Interim Penalty Policy Applicable To Certain Illegal Imports Of Bulk

Regulated Substances Under 40 C.F.R. Part 84: Phasedown Of Hydrofluorocarbons,
Appendix XII to the October 25, 1991 Clean Air Act Stationary Source Penalty Policy”
<https://www.epa.gov/system/files/documents/2023-04/interimhfcpenaltypolicyforbulkimports.pdf> (last visited on April 3, 2024).

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact in this Complaint. Complainant filed the original Complaint and served Respondent the Complaint on April 8, 2024. To request a hearing, Respondent must generally file a written Answer to the Complaint within thirty (30) days of receipt of the original Complaint. 40 C.F.R. § 22.15(a). Per 40 C.F.R. § 22.15(a), where Complainant files an Amended Complaint as a matter of right before the Answer is filed, Respondent shall have twenty (20) additional days from the date of service of the Amended Complaint to file its Answer using one of the following methods:

Electronically:

Documents can be filed electronically through the OALJ E-Filing System, a web-based tool accessible at <https://www.epa.gov/alj>. Any party choosing to file electronically must first register with the OALJ E-Filing System at EAB-ALJ E-Filing System Login/Registration.

By Mail (via USPS or UPS is acceptable, but Courier or personal delivery is not acceptable):

Office of Administrative Law Judges
U.S. Environmental Protection Agency
Attn: Mary Angeles, Headquarters Hearing Clerk
Mail Code 1900R, WJC East Mailroom 1309
1200 Pennsylvania Avenue NW
Washington, DC 20460

The Answer should clearly and directly admit, deny, or explain each of the factual

allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense, (2) the facts which the Respondent disputes, (3) the basis for opposing any proposed relief, and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted. If Respondent fails to file a written Answer within the timeframe specified above, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on the factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order without further proceedings. Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant 40 C.F.R. § 22.21(d) of the Consolidated Rules of Practice. The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

Complainant hereby consents to service via email. See 40 C.F.R. § 22.5(b)(2). **Complainant encourages electronic service.** See The Office of Administrative Law Judge's Revised Order Urging Electronic Filing And Service (June 22, 2023). Pursuant to 40 C.F.R. § 22.5(b)(2) of the Consolidated Rules of Practice, a copy of Respondent's Answer and all other documents that the Respondent files in this action should be served on the attorney assigned to represent Complainant in this case, at the mailing address OR email address below:

Conner Kingsley
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Washington, DC 20460

OR

kingsley.conner@epa.gov

VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if the settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and an appropriate civil penalty. However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint. The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply at this time because a specific penalty has not yet been proposed. *See* 40 C.F.R. § 22.18(a). In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the appropriate delegated official. The filing of a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement. If Respondent wishes to arrange a settlement conference, Respondent's legal counsel should contact Conner Kingsley at kingsley.conner@epa.gov prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer, within the timeframe specified in section VI. of this Complaint.

VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

Pursuant to 40 C.F.R. § 22.8 of the Consolidated Rules of Practice, at no time after the issuance of the Complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any other person who is likely to advise these officials on any decision in the proceeding, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as an argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of § 22.8 shall not apply to any person who has formally recused himself or herself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

[digitally signed and dated]
Complainant
Mary E. Greene, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 1119B, Mail Code 2201A
Washington, D.C. 20460
202-564-0254
greene.mary.e@epa.gov

In re: USA Wholesale Lubricant, Inc.
Docket Number: CAA-HQ-2024-8443

[digitally signed and dated]
Conner Kingsley, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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Washington, D.C. 20460
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kingsley.conner@epa.gov

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WASHINGTON, D.C.**

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Respondent	:	
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Amended Complaint and Notice of Opportunity for Hearing** in the matter of USA Wholesale Lubricant, Inc., Docket No. **CAA-HQ-2024-8443** was filed with the Hearing Clerk via the Office of Administrative Law Judge’s Electronic Filing System. I further certify that on the date set forth below, I caused to be served a true and correct copy of the 1) Amended Complaint and Notice of Opportunity for Hearing; 2) The Consolidated Rules of Practice at 40 C.F.R. Part 22; 3) The Office of Administrative Law Office’s Standing Order Authorizing Electronic Filing In Proceedings Before The Office Of Administrative Law Judges (Aug. 11, 2014); and 4) The Office of Administrative Law Judge’s Revised Order Urging Electronic Filing And Service (June 22, 2023); to each of the following persons, in the manner specified below, at the following addresses:

Maher Fateh, CEO
USA Wholesale Lubricant, Inc.
2242 Quimby Road Bldg. F, Unit A
San Jose, CA 95122-1331
Courtesy Email Sent to: maherfateh73@gmail.com

[digitally signed and dated]
Conner Kingsley, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance
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