**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**

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| **IN THE MATTER OF:** | ) | Order EPA-5-113-(a)-WI-16 |
| Marathon Motors<br>Marathon, Wisconsin | ) | |
| PROCEEDINGS PURSUANT TO<br>SECTION 113(a)(1) and 114(a)<br>OF THE CLEAN AIR ACT. | ) | |

**STATUTORY AUTHORITY**

The following order and request is issued pursuant to Sections 113(a)(1) and 114(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a) and 7414(a) against Respondent, Marathon Motors of Marathon, Wisconsin. This order and request is issued, by lawful delegation, by the Director of the Air and Radiation Division of Region 5, U.S. EPA.

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1) provides, in relevant part, that "[whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of . . . subchapter IV . . . the Administrator may . . . issue an Order requiring such person to comply with such requirement or prohibition."

Section 114 of the Act, 42 U.S.C. § 7414(a), provides that, for the purpose of carrying out any provision of the Clean Air Act, the Administrator may require any person, who the Administrator believes may have information necessary to determine compliance with the Clean Air Act, to provide information as the Administrator may reasonably require.

**STATUTORY AND REGULATORY BACKGROUND**

1. Section 609(a) of the Act, 42 U.S.C. § 7671h(a), authorizes the Administrator of the U.S. EPA ("Administrator") to promulgate regulations establishing standards and requirements for servicing motor vehicle air conditioners.

2. Section 609(c) of the Act, 42 U.S.C. § 7671h(c), provides in part: no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified.

3. On July 14, 1992, the Administrator initially promulgated regulations pursuant to Section 609(a) of the Act, 42 U.S.C. § 7671h(a). These regulations have been subsequently amended and are codified at 40 C.F.R. Part 82, Subpart B (40 C.F.R. §§ 82.30 through 82.42 and Appendices A through B).

4. 40 C.F.R. § 82.34(a)(1) and (2) states, in part, that "effective August 13, 1992, no person repairing or servicing motor vehicle air conditioners for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and unless such person has been

properly trained and certified by a technician certification program approved by the Administrator."

5. Section 612(c) of the Act, 42 U.S.C. § 7671k(c), requires the Administrator to promulgate rules providing that it shall be unlawful to replace any Class I or Class II substance with any substitute substance that the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative that (1) reduces overall risk to human health and the environment and (2) is currently or potentially available, and further requires the Administrator to publish a list of safe alternatives for specific uses.

6. On October 16, 1996, the Administrator promulgated regulations pursuant to Section 612(c) of the Act, 42 U.S.C. § 7671k(c). These regulations are codified at 40 C.F.R. Part 82, Subpart G (40 C.F.R. §§ 82.170 through 82.184 and Appendices A through D).

7. 40 C.F.R. § 82.174(c) states that "[n]o person may use a substitute without adhering to any use restrictions set by the acceptability decision, after the effective date of any rulemaking imposing such restrictions."

8. 40 C.F.R. Part 82 Subpart G, Appendix D, which became effective on November 15, 1996, states, in part, that "[e]ach refrigerant may only be used with a set of fittings that is unique to that refrigerant," and further

specifies the criteria that those fittings must meet when existing air conditioner service ports are retrofitted.

9. 40 C.F.R. Part 82, Subpart G, Appendix D also states that when a performing a retrofit, the person conducting the retrofit must apply to the air conditioning system in the engine compartment a label containing specified information.

10. 40 C.F.R. Part 82, Subpart G, Appendix D also states, in part, that no substitute refrigerant may be used to "top off" a system that uses another refrigerant. The original refrigerant must be recovered prior to charging with a substitute.

## Findings of Fact

11. Respondent, Marathon Motors, is a company under the laws of the State of Wisconsin with a place of business at 116 Main Street, Marathon, Wisconsin.

12. On or about August 10, 1998, Respondent purchased refrigerant containing chlorofluorocarbons. Specifically, Respondent purchased McCool Chill-it, a class II ozone-depleting refrigerant blend consisting of R-22, R-142b, R-124 and R-600a.

13. Respondent, on or after August 10, 1998:

- repaired or serviced a motor vehicle air conditioner involving the refrigerant for such air conditioner for consideration using a technician; but did not employ a technician for performing repairs

or service on motor vehicles for Respondent who had been properly trained and certified by a technician certification program approved by the U.S. EPA.

☐ repaired or serviced a motor vehicle air conditioner involving the refrigerant for such air conditioner for consideration; but did not possess approved refrigerant recycling equipment.

☒ charged a motor vehicle air conditioner with refrigerant; but did not install a set of fittings unique to that refrigerant.

☒ performed a retrofit of a motor vehicle air conditioning system; but did not apply to the air conditioning system in the engine compartment any label indicating that a retrofit had been performed.

☐ "topped off" a system with a refrigerant that used a different refrigerant; but did not possess EPA-approved recovery and removal equipment to remove the original refrigerant prior to topping off.

**Finding of Violation**

14. Respondent is a "person" pursuant to 40 C.F.R. §§ 82.32 and 82.172.

15. Respondent:

☐ violated Section 609 of the Act, 42 U.S.C. § 7671h and 40 C.F.R. § 82.34(a)(1) by repairing or servicing a motor vehicle air conditioner involving the refrigerant for such air conditioner for consideration using a technician who had not been properly trained and certified by a technician certification program approved by the U.S. EPA;

☐ violated Section 609 of the Act, 42 U.S.C. § 7671h and 40 C.F.R. 82.34(a)(2), by repairing or servicing a motor vehicle air conditioner involving the refrigerant for such air conditioner for consideration without properly using approved refrigerant recycling equipment;

☒ violated 40 C.F.R., Part 82 Subpart G, Appendix D by charging motor vehicles with refrigerant without installing a set of fittings unique to that refrigerant.

☒ violated 40 C.F.R. Part 82 Subpart G, Appendix D by failing to apply to the air conditioning system in the engine

compartment a label containing specified information, when a performing a retrofit.

- ☐ violated 40 C.F.R. Part 82 Subpart G, Appendix D by using a substitute refrigerant to "top off" a system that uses another refrigerant, without first recovering and removing the original refrigerant.

**IT IS HEREBY ORDERED THAT:**

16. Respondent shall comply with Section 609(c) of the Act, 42 U.S.C. § 7671g, and the regulations at Title 40 of the *Code of Federal Regulations*, Part 82, Subparts B and G.

17. Respondent shall submit a signed letter of intent to comply with this order, within 3 business days. Such notice shall be mailed to the address listed in the following paragraph.

18. Prior to performing any further activities involving the maintenance, service, repair and disposal of appliances containing refrigerant covered by Section 609(c) of the Act, 42 U.S.C. § 7671h, and 40 C.F.R. Part 82, Respondent shall:

- provide U.S. EPA with a copy of each employee's technician certification card;
- provide U.S. EPA with a signed statement certifying that Respondent is using EPA-approved refrigerant recycling equipment in accordance with 40 C.F.R. Part 82;
- provide U.S. EPA with a signed statement certifying that any servicing of motor vehicle air conditioning equipment shall be done in compliance with 40 C.F.R. Part 82.

Such statement shall be mailed to U.S. EPA no later than 30 days prior to engaging in any such activities. Such statement shall be mailed to:

Branch Secretary
Attn: Joseph Cardile
Air and Radiation Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604

19. Failure to comply with the terms of this Compliance order and request for information may subject Respondent and its owner(s) to civil penalties and/or further enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.

20. Pursuant to 40 C.F.R. Part 2, Subpart B, Respondent is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this request, <u>except</u> emission data, as defined at 40 C.F.R. § 2.301(a)(2). Failure to assert a claim of business confidentiality renders all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. Part 2, Subpart B.

21. Any information submitted in response to this request may be used by U.S. EPA in support of an administrative, civil, or criminal action against Respondent. Knowing submittal of false information to U.S. EPA, in response to this request, may be actionable under Section 113(c)(2) of the Act, as well as 18 U.S.C. § 1341.

22. Nothing contained in this Order shall affect the responsibility of Respondent to comply with all applicable Federal, State or local laws or regulations, including other applicable provisions of 40 C.F.R. Part 82.

23. Nothing in this Order shall be construed to prevent or limit U.S. EPA's authority to collect penalties and pursue appropriate relief under Sections 113(b) and 113(d) of the Act, 42 U.S.C. §§ 7413(b) and 7413(d).

24. This Order is not subject to the Paperwork Reduction Act, because it seeks collection of information in an administrative action, or investigation involving U.S. EPA and specific individuals or entities.

25. This Order is effective on the date of signature by the Acting Division Director of the Air and Radiation Division.

9/30/99
Date

For
Margaret M. Guerriero, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard (A-18J)
Chicago, Illinois 60604

In the Matter of Marathon Motors,

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the ADMINISTRATIVE ORDER was sent via certified mail, return receipt requested, to the persons identified below, by placing it in the custody of the United States Postal Service addressed as follows:

Duane Myszka, Owner
Marathon Motors
116 Main Street
Marathon, Wisconsin 54448

Greg Gruna - CFC Program Specialist
West Central Region
1300 W. Clairemont
P.O. Box 4001
Eau Claire, Wisconsin 54702

9/30/99
Date

Shanee Rucker
Shanee Rucker, Secretary
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

P140777353
Certified Mail Number