

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

) Order
IN THE MATTER OF:) EPA-5-99-113(a)OH- 06
)
Mose Cohen & Sons, Inc.)
990 West 5th Street)
Cincinnati, Ohio)
)
PROCEEDINGS PURSUANT TO)
SECTIONS 113(a), 114(a) AND 608)
OF THE CLEAN AIR ACT.)

STATUTORY AUTHORITY AND BACKGROUND

The following Order is issued pursuant to Sections 113(a), 114(a) and 608 of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a), 7414(a) and 7671g, to Mose Cohen & Sons, Inc. (Cohen), Cincinnati, Ohio. This Order is issued, by lawful delegation, by the Acting Director of the Air and Radiation Division of Region 5, United States Environmental Protection Agency (U.S. EPA).

1. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides, in relevant part, that "...[w]henver, 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."

2. Section 114(a) of the Act, 42 U.S.C. §7414(a), provides that, for the purpose of carrying out any provisions 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.

3. Section 608(a) of the Act, 42 U.S.C. § 7671g(a), provides, in part, that the Administrator of the U.S. EPA shall promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during maintenance, service, repair, or disposal of appliances and industrial process refrigeration. Section 608(c) of the Act 42 U.S.C. § 7671g(c), provides, in part, that it shall be unlawful for any person in the course of maintaining, servicing, repairing or disposing of an appliance to knowingly vent or otherwise knowingly release a class I or class II refrigerant into the environment.
4. The regulations promulgated by U.S. EPA pursuant to Section 608(a) of the Act are codified in 40 C.F.R. Part 82.
5. Cohen is an Ohio corporation with its principal place of business in Cincinnati, Ohio.
6. On April 24 and June 30, 1998, U.S. EPA issued administrative orders (Nos. EPA-5-98-113(a)-OH-10 and EPA-5-98-113(a)-OH-12, respectively) to Cohen.
7. On April 30, 1998, David Kee, Director, Air and Radiation Division, Region 5, issued a Finding of Violation (FOV) to Cohen, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. The FOV alleged, among other things, that Cohen violated Section 608(a) of the Act and certain regulations promulgated thereunder at 40 C.F.R. Part 82, Subpart F. More specifically, the FOV alleged that Cohen violated 40 C.F.R. §82.154(a) (knowing venting) and 40 C.F.R. §82.156(f) (verification).

8. Subsequent to issuance of the FOV, and the April 24 and June 30, 1998 Orders, the parties have conferred to discuss the alleged violations and settlement. Cohen neither admits nor denies the specific factual allegations contained in the FOV and the April 24 and June 30, 1998 Orders. The parties agree that this Order is an appropriate means of resolving this matter. The parties further agree that such resolution is in full and complete settlement of any and all violations which are alleged or could have been alleged in the FOV or the April 24 and June 30, 1998 Orders as arising out of the activities of Cohen which are the subject of the FOV or April 24 and June 30, 1998 Orders, or of which U.S. EPA is aware.

ORDER

Before taking any testimony, without adjudication of any issues of law or fact, Cohen consents to the entry of, and agrees to comply with, this Order. It is determined that the actions hereby ordered and agreed to are reasonable and meet the requirements of Sections 113(a), 114(a) and 608 of the Act, 42 U.S.C. §§7413(a), 7414(a) and 7671g.

THEREFORE, IT IS HEREBY AGREED AND ORDERED THAT:

9. Cohen certifies that it is in compliance with Section 608(a) of the Act, 42 U.S.C. §7671g, and the requirements of 40 C.F.R. Part 82, Subpart F, at any and all scrap disposal facilities that it owns or operates.

10. Prior to performing any future activities involving the disposal of scrap materials that may contain refrigerant covered by Section 608 of the Act, 42 U.S.C. § 7671g, Cohen shall:

a. Continue to comply with the verification provisions of 40 C.F.R. 82.156(f) by having all its suppliers either: 1) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. §156(g) or (h); or 2) at the time of scrap delivery, obtain a verification statement which contains all the information provided in the Sample Verification Statement, attached hereto as Exhibit A.

b. Implement, among other things, the following scrap handling procedures:

1) Prior to accepting any load of appliances, Cohen will perform visual inspections of each load of appliances, to the extent reasonably possible, to determine the uniformity and acceptability of the material, and to confirm the removal of refrigerants from such appliances. If Cohen suspects that these appliances contain refrigerants, Cohen shall return the appliances to the seller whenever reasonably possible.

2) After Cohen has accepted materials containing appliances, during its unloading or processing, Cohen will perform visual inspection of appliances, to the extent reasonably possible, to confirm the absence of any appliances suspected of containing refrigerants.

3) If during unloading or processing, Cohen determines that there are appliances suspected of containing refrigerants, the following procedures shall apply:

a) Cohen will return the appliances to the seller whenever reasonably possible;

b) Cohen will safely store in a sequestering area the appliances awaiting return to the seller and appliances where the seller cannot be identified. Care will be taken to prevent damage to this scrap to prevent leakage of refrigerants. Cohen will inspect the sequestering area, at a minimum, on a monthly basis to identify items in need of evacuation and to ensure that the sequestered items are secured to minimize the potential for the release of refrigerants.

c) Where the seller cannot be identified or appliances cannot be returned, Cohen will have refrigerant evacuated by a certified technician in accordance with the applicable procedures in

40 C.F.R. Part 82, Subpart F. In such cases, Cohen shall mark the subject items with a sticker stating that the unit has been evacuated of all refrigerant gas, to be signed and dated by the certified technician, or otherwise mark the items in an acceptable way to indicate that CFCs have been removed. Cohen shall maintain a log book documenting such appliances and their disposition. .

4) The log book entries, technicians' certifications regarding CFC removal, and copies of verifications shall be maintained by Cohen at each of its scrap recycling facilities for a period of at least three years.

11. Cohen shall submit copies to U.S. EPA of the first five (5) verification statements, if any, which it enters into subsequent to the effective date of this Order. These should be submitted, no later than 45 days after their execution,

to:

Joseph Cardile
Air Enforcement and Compliance Branch (AE-17J)
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

12. Pursuant to 40 C.F.R. Part 2, Subpart B, Cohen is entitled to assert a claim of business confidentiality regarding any portion of the information required to be submitted by U.S. EPA in response to this Consent Order, except 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.

13. The April 24 and June 30, 1998 Orders are hereby superseded by this Order.

14. Failure to comply with the terms of this Order may subject Cohen to civil penalties and/or further enforcement action under Section 113 of the Act, 42 U.S.C. § 7413. Cohen reserves its right to challenge or appeal any subsequent action by U.S.EPA to impose penalties or take further enforcement action against Cohen.

15. Nothing contained in this Order shall relieve Cohen of its duty to comply with all applicable provisions of the Act and other Federal, State or local laws or statutes, or shall restrict U.S.EPA's authority to seek compliance with all applicable provisions of the Act and other applicable laws or regulations. This Order resolves only past administrative civil liability related to this proceeding. Nothing herein shall limit the United States seeking penalties for past or future criminal conduct, civil and criminal forfeiture, and penalties for future civil liability. The parties waive any arguments that they may have that this Order or the proceeding to date determines any claim, issue, right, defense or privilege in any subsequent criminal prosecution or proceeding for civil or criminal forfeiture, and Cohen expressly waives its right to rely upon this Order as a Double Jeopardy clause defense to any subsequent forfeiture proceeding or criminal prosecution. This paragraph shall survive termination of this Order.

16. The provisions of this Order shall apply to and be binding on Cohen and any successor(s) in interest. Cohen shall give notice of this Order to any successor(s) in interest prior to transfer of ownership, and shall provide verification to U.S.EPA, Region 5, that such notice has been given within ten days of such transfer. However, Cohen shall not be required to provide such notice unless more than fifty percent of the outstanding stock is sold or transferred.

17. This Order is effective on the date of signature by the Division Director of the Air and Radiation Division. It shall automatically terminate two years after its effective date, provided that Cohen has complied with all terms of

this Order throughout its duration.

8-30-99
Date


Mose Cohen & Sons, Inc.

9/23/99
Date

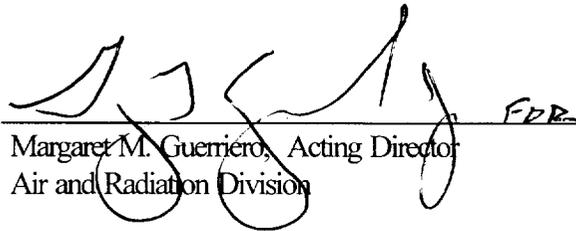
 ~~FDR~~
Margaret M. Guerriero, Acting Director
Air and Radiation Division

EXHIBIT A

VERIFICATION STATEMENT

MOSE COHEN AND SONS, INC.

Notwithstanding any warranty or limitation of warranty herein, Seller certifies that to the best of his knowledge, all refrigerant (including but not limited to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) as defined in § 608 of the Clean Air Act and 40 CFR Part 82) [Check One]

- That had not leaked previously has been recovered from the appliance or shipment of appliances delivered under this sale. The refrigerant has been removed by:

(name of recovery Technician)

_____ on
(City, State)

(Date)

- has leaked previously from the appliance or shipment of appliances delivered under this sale.

Seller further agrees to indemnify and hold Mose Cohen and Sons, Inc. harmless from any claim, penalty, fine, fee, cost, attorney's fees, or other liability resulting in whole or in part from seller's breach of this certification.

Seller:

Company

Address

City, State, Zip Code

Authorized Signature

Date Signed

In the Matter of Cohen Industrial Scrap Processors,

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:

Isadore Goldenberg, Vice-President
Cohen Industrial Scrap Processors
990 West 5th Street
Cincinnati, Ohio 45203

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1600 Watermark Drive
Columbus, Ohio 43215-1034

Harry Schwietering, Chief
Hamilton County Department of
Environmental Services
1632 Central Parkway
Cincinnati, Ohio 45210

Steven F. Hirsch
Baise, Miller & Freer, PC
815 Connecticut Ave, NW
Suite 620
Washington, DC 20006

28 Sept 99
Date

Loretta Shaffer
Loretta Shaffer, Secretary
AECAS (MN/OH)

Certified Mail Number P140 777 342