

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Forest Green Metals and) **FINDING OF VIOLATION**
Recycling)
Forest Park, Ohio) **EPA-5-99-OH-22**
)
Proceedings Pursuant to)
Section 113 (a)(3) of the)
Clean Air Act,)
42 U.S.C. § 7413(a)(3))

FINDING OF VIOLATION

Pursuant to Section 113 of the Clean Air Act (Act), 42 U.S.C. § 7413, Forest Green Metals and Recycling (Forest Green) and the State of Ohio are hereby notified that the Administrator of the United States Environmental Protection Agency (U.S. EPA), by authority duly delegated to the undersigned, finds Forest Green, of 11298 Sebring Drive, Forest Park, Ohio, in violation of Section 608 of the Act, 42 U.S.C. § 7671g, and its implementing regulations set forth at 40 C.F.R. §§ 82.156 and 82.166.

STATUTORY AND REGULATORY BACKGROUND

1. Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2), authorizes the U.S. EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of class I and II substances during service, repair, or disposal of appliances and industrial process refrigeration. The Administrator initially promulgated these regulations on May 14, 1993, 58 Fed. Reg. 28712. The Administrator amended the regulations on August 19, 1994, 59 Fed. Reg. 42956; November 9, 1994, 59 Fed. Reg. 55926; and August 8, 1995, 60 Fed. Reg. 40440. The regulations are codified at 40 C.F.R. Part 82, Subpart F (\$ 82.150 et seq.)
2. 40 C.F.R. § 82.156(f) provides that, 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 small appliances, room air conditioning, MVACs (motor vehicle air conditioners) or

MVAC-like appliances must either:

- (1) recover any remaining refrigerant from the appliance in accordance with specific procedures, 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 specific procedures, 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.
3. 40 C.F.R. § 82.166(i) provides that, effective November 14, 1994, persons disposing of small appliances, MVACs, and MVAC-like appliances must maintain copies of a signed statement obtained pursuant to § 82.156(f) (2).
 4. 40 C.F.R. § 82.152 defines "appliance" as any device which contains and 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.
 5. 40 C.F.R. § 82.152 defines "disposal" as the process leading to and including:
 - (1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;
 - (2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; or
 - (3) The disassembly of any appliance for reuse of its component parts.

Statement of Facts

6. Forest Green is a partnership, licensed to do business in Ohio, and is, therefore, a "person" as defined in 40 C.F.R. § 82.152. Forest Green operates as a recycling center for waste materials specializing in buying back cans and metals

and is located at 11298 Sebring Drive, Forest Park, Ohio. Forest Green contracted to provide containers for the removal of construction and metal materials for the renovation project at Forest Ridge Apartments and Town Homes Complex (Forest Ridge) located at 5036 Hawaiian Terrace, Cincinnati, Ohio.

7. Forest Green contracted to dispose of all existing air conditioning units removed from the apartments and town homes by Don M. Barron Contractors, Inc. and therefore, is subject to the regulations at 40 C.F.R. Part 82 Subpart F.
8. On January 28, 1998, two inspectors from Hamilton County Department of Environmental Services (HAMCO), performed an inspection at Forest Ridge to determine compliance with the requirements of 40 C.F.R. Part 82 Subpart F.
9. Upon inspection of the area, inspectors discovered a pile of window style unit air conditioners near a construction trailer in the rear of the Forest Ridge apartments. There were approximately 50 units with severed compressor lines laying on the ground. The severing of the compressor lines resulted in the knowingly release of refrigerant to the atmosphere. This release violates 40 C.F.R. Part 82.154(a).
10. On January 29, 1998, a HAMCO Permits and Enforcement Area Supervisor and one of the inspectors from the day before, conducted a follow-up inspection in order to further clarify the findings from the previous inspection. Video was taken in order to demonstrate the extent of the violations. The video clearly shows the pile of air conditioning units and the severed compressor lines in several units. A few air conditioning housing units were also videotaped lying in a container provided by Forest Green.
11. Forest Green maintains that their company's policy from the inception of the business is that Forest Green will not accept or recycle any metal units that have compressors in them. They will accept the compressor, but require that they are to be separated from the unit.
12. Forest Green provided containers for the compressors, and separate containers for the air conditioning housing units.
13. Forest Green then hauled all containers from the Forest Ridge Apartments work site. Forest Green crushed the air conditioning unit shells at the Forest Green facility before transporting them and the compressors to the David J.

Joseph Company located in Newport, Kentucky for recycling.
 (The David J. Joseph Company has changed names and is now
 called River Metals Recycling, LLC.)

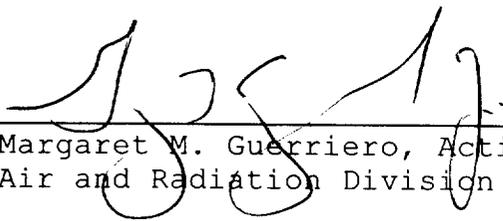
Findings of Violation

14. Forest Green's inability to verify that refrigerant from the air conditioning units had been previously evacuated, in accordance with 40 C.F.R. § 82.156(f)(2), before hauling the air conditioning units from the Forest Ridge Apartments work site, constitutes a violation of Section 608(c)(1) of the Act, 42 U.S.C. § 7671(c)(1), and 40 C.F.R. §§ 82.156(f) and 82.166(i).

WHEREFORE, the Administrator of the U.S. EPA, by authority duly delegated to the undersigned, hereby notifies Forest Green Metals and Recycling and the State of Ohio that Forest Green Metals and Recycling is in violation of the Clean Air Act and implementing regulations as set forth above.

Date

6/2/99



 Margaret M. Guerriero, Acting Director
 Air and Radiation Division

FOR

cc: Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

CERTIFICATE OF MAILING

I, Loretta Shaffer, do hereby certify that a Finding of Violation pursuant to the Clean Air Act was sent by Certified Mail, Return Receipt Requested, to:

Bernard w. Henke, Owner
11298 Sebring Drive
Forest Park, Ohio 45240

I also certify that copies of the Finding of Violation pursuant to the Clean Air Act was sent by first class mail to:

Robert Hodanbosi, chief
Division of Air Pollution Controls
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

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

on the 3rd day of JUNE, 1999.


Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: P140 777 297