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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'99 JUN 25 P2:46

IN THE MATTER OF:)	Docket No.	CAA-5-'99-014
)		
R & L Marketing, Inc.)	Proceeding to Assess an	
Fond du Lac, Wisconsin)	Administrative Penalty	
)	under Section 113(d) of the	
Respondent.)	Clean Air Act,	
)	42 U.S.C. § 7413(d)	
)		

Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is R&L Marketing, a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the sale or distribution of any class I or class II substances for use as refrigerants.

5. The term "class I substance" means each of the substances listed in Section 602(a) of the Act, 42 U.S.C. § 7671a(a) and, as provided in Section 601(3) of the Act, 42 U.S.C. § 7671(3).

6. The term "class II substance" means each of the substances listed in Section 602(b) of the Act, 42 U.S.C. § 7671a(b) and, as provided in Section 601(4) of the Act, 42 U.S.C. § 7671(4).

7. On November 14, 1994, the Administrator of U.S. EPA initially promulgated regulations pursuant to Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2) (58 *Fed. Reg.* 28712). These regulations have been subsequently amended and are codified at 40 C.F.R. Part 82, Subpart F (40 C.F.R. §§ 82.150 through 82.166 and Appendices A through D).

8. 40 C.F.R. § 82.154(m) requires, in part, that 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 the buyer is a certified technician, or the refrigerant is sold only for eventual resale to certified technicians.

9. In accordance with 40 C.F.R. § 82.154(m)(1) and (3), a certified technician is a person who has successfully completed a certification program which has been approved by EPA under 40 C.F.R. § 82.161 or 40 C.F.R. Part 82, Subpart B.

10. 40 CFR § 82.166(a) and (m) require that persons who sell or distribute any class I or class II substance for use as a refrigerant must retain invoices that indicate the name of the purchaser, the date of sale, and the quantity of refrigerant purchased. These records must be kept for a minimum of three years unless otherwise indicated.

General Allegations

11. Respondent is the owner and operator of R & L Marketing, Inc. located at 730 South Military Road, Fond du Lac, Wisconsin.

12. Respondent is a "person," as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

13. McCool Chill-it is a Class II ozone depleting refrigerant blend.

14. Respondent purchased McCool Chill-it from McMullen Oil Products, Incorporated as follows:

Date	Quantity
06/03/98	Ten 25 pound cylinders
06/18/98	Twenty 25 pound cylinders
06/23/98	Twenty 25 pound cylinders
06/30/98	Twenty 25 pound cylinders
	100 cases (9.6 ounce cans)
07/02/98	Forty 25 pound cylinders
07/23/98	Forty 25 pound cylinders

15. On July 15, 1998, the Wisconsin Department of Agriculture, Trade and Consumer Protection began an investigation of R & L Marketing's sale or distribution of McCool Chill-it. The

information gathered in this investigation through document requests and interviews supports the allegations in this Complaint.

16. On February 18, 1999, Complainant issued a Finding of Violation (FOV) to Respondent, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. The FOV cited violations of Section 608(c) of the Act, 42 U.S.C. § 7671g, 40 C.F.R. § 82.154(m) and 40 C.F.R. §§ 82.166(a) and (m).

Sale or Distribution and Recordkeeping

Count I

17. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

18. On or about August 4, 1998, Respondent sold or distributed McCool Chill-it to a representative of Arena Auto, 735 Lombardi Avenue, Green Bay, Wisconsin.

19. At the time of the sale, Arena Auto did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

20. Respondent's records for the sale of McCool Chill-it to a representative of Arena Auto lack the date of sale.

21. Respondent's sale or distribution of McCool Chill-it to a representative of Arena Auto is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

22. Respondent's failure to maintain records which include the date of sale to a representative of Arena Auto is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count II

23. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

24. On or about July 30, 1998, Respondent sold or distributed McCool Chill-it to a representative of B&D Auto and Truck Body, N5665 Frontage Road, Plymouth, Wisconsin.

25. At the time of the sale, B&D Auto and Truck Body did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

26. Respondent's records for the sale of McCool Chill-it to B&D Auto and Truck Body lack the date of sale.

27. Respondent's sale or distribution of McCool Chill-it to a representative of B&D Auto and Truck Body is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

28. Respondent's failure to maintain records which include the date of sale to a representative B&D Auto and Truck Body is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count III

29. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

30. During the period June through August 1998, Respondent sold or distributed McCool Chill-it to Heim Motors, 204 Broadway, Denmark, Wisconsin.

31. At the time of the sale, Heim Motors did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

32. Respondent's records for the sale of McCool Chill-it to a representative of Heim Motors lack the date of sale.

33. Respondent's sale or distribution of McCool Chill-it to a representative of Heim Motors is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

34. Respondent's failure to maintain records which include the date of sale to a representative of Heim Motors is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count IV

35. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

36. During the period June through August 1998, Respondent sold or distributed McCool Chill-it to Layton Avenue Motors, 1602

East Layton Avenue, Milwaukee, Wisconsin.

37. At the time of the sale, Layton Avenue Motors did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

38. Respondent's records for the sale of McCool Chill-it to a representative of Layton Avenue Motors lack the date of sale.

39. Respondent's sale or distribution of McCool Chill-it to a representative of Layton Avenue Motors is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

40. Respondent's failure to maintain records which include the date of sale to a representative of Layton Avenue Motors is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count V

41. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

42. On or about August 10, 1998, Respondent sold or distributed McCool Chill-it to a representative of Marathon Motors, 116 Main Street, Marathon, Wisconsin.

43. At the time of the sale, Marathon Motors did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

44. Respondent's records for the sale of McCool Chill-it to

a representative of Marathon Motors lack the name of the purchaser and the date of sale.

45. Respondent's sale or distribution of McCool Chill-it to a representative of Marathon Motors is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

46. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to a representative of Marathon Motors is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count VI

47. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

48. On or about July 22, 1998, Respondent sold or distributed McCool Chill-it to a representative of Oshkosh Tire, Incorporated, 3483 Jackson Street, Oshkosh, Wisconsin.

49. At the time of the sale, Oshkosh Tire, Incorporated did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

50. Respondent's records for the sale of McCool Chill-it to Oshkosh Tire lack the date of sale.

51. Respondent's sale or distribution of McCool Chill-it to a representative of Oshkosh Tire, Incorporated is a violation of

40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

52. Respondent's failure to maintain records which include the date of sale to a representative of Oshkosh Tire is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count VII

53. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

54. Respondent sold or distributed McCool Chill-it to a representative of Racine Speed and Power, 942 Erie Street, Racine, Wisconsin.

55. At the time of the sale, Racine Speed and Power did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

56. Respondent's records for the sale of McCool Chill-it to a representative of Racine Speed and Power lack the name of the purchaser and the date of sale.

57. Respondent's sale or distribution of McCool Chill-it to a representative of Racine Speed and Power is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

58. Respondent's failure to maintain records which include the name of the purchaser and the date of sale is a violation of

40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count VIII

59. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

60. On or about June 29, 1998, Respondent sold or distributed McCool Chill-it to a representative of S&S Auto Sales, 9832 West Appleton Avenue, Milwaukee, Wisconsin.

61. At the time of the sale, S&S Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

62. Respondent's records for the sale of McCool Chill-it include no record of the June 29, 1998, sale to S&S Auto Sales.

63. Respondent's sale or distribution of McCool Chill-it to a representative of S&S Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

64. Respondent's failure to maintain records for the June 29, 1998, sale to a representative of S&S Auto Sales is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count IX

65. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

66. On or about August 5, 1998, Respondent sold or distributed McCool Chill-it to a representative of S&S Auto Sales, 9832 West Appleton Avenue, Milwaukee, Wisconsin.

67. At the time of the sale, S&S Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

68. Respondent's records for the sale of McCool Chill-it to S&S Auto Sales lack the date of sale.

69. Respondent's sale or distribution of McCool Chill-it to a representative of S&S Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

70. Respondent's failure to maintain records which include the date of sale to a representative of S&S Auto Sales is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count X

71. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

72. During the period June through August 1998, Respondent sold or distributed McCool Chill-it to a representative of Super Service Incorporated, 10712 West Hampton Avenue, Milwaukee, Wisconsin.

73. At the time of the sale, Super Service Incorporated did

not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

74. Respondent's records for the sale of McCool Chill-it to a representative Super Service Incorporated lack the date of sale.

75. Respondent's sale or distribution of McCool Chill-it to a representative of Super Service Incorporated is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

76. Respondent's failure to maintain records which include the date of sale to a representative of Super Service Incorporated is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XI

77. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

78. During the period June through August 1998, Respondent sold or distributed McCool Chill-it to a representative of Tom's Used Cars, N4116 Highway 57, Waldo, Wisconsin.

79. At the time of the sale, Tom's Used Cars did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

80. Respondent's records for the sale of McCool Chill-it to

a representative of Tom's Used Cars lack the date of sale.

81. Respondent's sale or distribution of McCool Chill-it to a representative of Tom's Used Cars is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

82. Respondent's failure to maintain records which include the date of sale to a representative of Tom's Used Cars is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XII

83. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

84. In July 1998, Respondent sold or distributed McCool Chill-it to a representative of Westside Service, 6049 Vine Street, Auburndale, Wisconsin.

85. At the time of the sale, Westside Service did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

86. Respondent's records for the sale of McCool Chill-it to a representative of Westside Service lack the name of the purchaser and the date of sale.

87. Respondent's sale or distribution of McCool Chill-it to a representative of Westside Service is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act,

42 U.S.C. § 7671g(a)(2).

88. Respondent's failure to maintain records which include the name of the purchaser and the date of sale to a representative of Westside Service is a violation of 40 C.F.R. § 82.166(a) and (m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Sale or Distribution Only

Count XIII

89. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

90. On or about August 3, 1998, Respondent sold or distributed McCool Chill-it to a representative of Cadott Auto Sales, 433 East Chippewa Street, Cadott, Wisconsin.

91. At the time of the sale, Cadott Auto Sales did not employ a certified technician and did not purchase such refrigerant for eventual resale to certified technicians.

92. Respondent's sale or distribution of McCool Chill-it to a representative of Cadott Auto Sales is a violation of 40 C.F.R. § 82.154(m) and, therefore, of Section 608(a)(2) of the Act, 42 U.S.C. § 7671g(a)(2).

Count XIV

93. Complainant incorporates paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

94. On or about June 29, 1998, Respondent sold or