UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF	)	
	)	
Shafer Enterprises	)	**ADMINISTRATIVE ORDER**
Jonesboro, Georgia	)	
	)	**EPA-5-01-113(a)-IN-06**
Proceeding Under Section	)	
113(a) and 114(a) of the	)	
Clean Air Act, 42 U.S.C.	)	
§§ 7413(a)(3) and 7414(a)	)	

I. Administrative Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Shafer Enterprises (Shafer), under Sections 113(a)(3) and 114(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a).

II. Statutory and Regulatory Authority

2. The purpose of Subchapter VI of the Act, 42 U.S.C. § 7671 (a-q), is to preserve the stratospheric ozone layer, which protects the earth from the penetration of ultraviolet radiation. An increase in the penetration of ultraviolet radiation will result in potential health and environmental harm, including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants, including crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics.

3. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an Order requiring compliance to any person who has violated or is in violation of the Federal regulations. The Administrator has delegated the authority to issue these orders to the Director of the Air and Radiation Division.

4. Section 612 of the Act, 42 U.S.C. § 7671(k), states that Class I and Class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

5. 40 C.F.R. § 82.170 is the Significant New Alternatives Policy (SNAP) and implements Section 612 of the Act. The SNAP program identifies safe substitutes, evaluates the acceptability of those substitutes, promotes the use of those substitutes believed to present lower overall risks to human health and the environment, as well as prohibiting the use of those substitutes found to increase overall risks.

6. 40 C.F.R. § 82.176(a) states that any new substitute introduced into commerce must be submitted for approval to the U.S. EPA. The information required for submittal can be found in 40 C.F.R. § 82.178. Specifically, 40 C.F.R § 82.178(a)(3) states that identification of the applications for each end-use in which the substitutes are likely to be used must be submitted.

7. 40 C.F.R. § 82.180(b) states that once applications for substitutes are submitted, the U.S. EPA will make a decision, listing the substitute as: acceptable, acceptable subject to use conditions, acceptable subject to narrowed use limits, unacceptable, or pending. Use of a substitute that is inconsistent with the use conditions renders the substitute unacceptable.

8. 40 C.F.R. § 82.174(a) states that no person may introduce a new substitute into interstate commerce before the expiration of 90 days after a notice is initially submitted to U.S. EPA under § 82.176(a).

III. Findings

9. Shafer, P.O. Box 712, Jonesboro, Georgia, manufacturers, distributes, and/or sells a Kwik Kool System racing shirt.

10. The Kwik Kool System racing shirt uses refrigerant substitute HFC-134a.

11. HFC-134a is an approved substitute for certain end-uses for some Class I or Class II refrigerants.

12. HFC-134a has not been approved for an end-use in personal cooling systems, racing shirts, or any similar product.

13. An application was never submitted for HFC-134a to be used in personal cooling systems, racing shirts, or any similar product.

14. At a trade show in Indiana, a representative from Shafer was witnessed demonstrating the Kwik Kool System for the purpose of selling and distributing the product. At this time, the Shafer representative vented the refrigerant from the Kwik Kool System into the atmosphere.

IV. Order

15. Shafer shall not introduce the Kwik Kool System racing shirt and the refrigerant HFC-134a into interstate commerce before 90 days after a notice is initially submitted to the U.S. EPA for approval.

16. Shafer shall comply with, and maintain continuous compliance with, all requirements of 40 C.F.R. Part 82. Specifically, Shafer shall cease the manufacture, distribution, and/or selling of the Kwik Kool System racing shirt.

17. Shafer may submit an application under 40 C.F.R. § 82.176 to the U.S. EPA for a specific end-use of HFC-134a or any other substitute refrigerant for review to comply with Federal regulations and the Act.

V. General Provisions

18. This Order does not affect Shafer's responsibility to comply with other local, State, and Federal laws and regulations.

19. This Order does not restrict U.S. EPA's authority to enforce Sections 113 and 114 of the Act, 42 U.S.C. 7413 and 7414 or any other section of the Act.

20. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Shafer's violations of Section 612 of the Act.

21. Failure to comply with this Order may subject Shafer to penalties of up to $27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

22. The terms of this Order are binding on Shafer, its assignees and successors. Shafer shall give notice of this Order to any successors in interest, prior to transferring ownership, and shall simultaneously verify to U.S. EPA, at the addresses listed below, that Shafer has given such notice.

Attn: Compliance Tracker, AE-17J
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

23. Under 40 C.F.R. Part 2, Subpart B, Shafer is entitled to assert a business confidentiality claim covering any part of the submitted information which is not emission data or necessary to determine emission data. Failure to assert such a claim makes the submitted information available to the public without further notice. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in 40 C.F.R. Part 2, Subpart B.

24. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

25. U.S. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.

26. Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), states that an Order shall not take effect until the person to whom it is issued has had an opportunity to confer with U.S. EPA about the alleged violation. Therefore, U.S. EPA is giving Shafer an opportunity to confer with U.S. EPA concerning this

Order. Shafer may schedule a conference with U.S. EPA by calling Ms. Cynthia King at (312) 886-6831 or Ms. Lynne Suesse at (312) 886-0250 within three days of Shafer's receipt of this Order.

27. This Order is effective seven calendar days following Shafer's receipt of this Order.

6/26/01
Date

Cheryl Newton, Acting Director
Air and Radiation Division

Enclosures

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Order, EPA-5-01-113(a)IN-06, by Certified Mail, Return Receipt Requested, to:

Rich Shafer, Vice President of Marketing
Shafer Enterprises
P.O. Box 712
Jonesboro, Georgia 30237

I also certify that I sent a copy of the Administrative Order, EPA-5-01-113(a)IN-06, by First Class Mail to:

Tony Cutrer
Air Protection Branch
Georgia Department of Natural Resources
Environmental Protection Division
4244 International Parkway, Suite 120
Atlanta, GA 30354

on the 26th day of June 2001.

Betty Williams

Betty Williams, Secretary
AECAS(IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9593 1616