

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

	)	
	)	Order
IN THE MATTER OF:	)	EPA-5-99-113 (a) -WI-9
	)	
Lee Michaletz and	)	
David Michaletz	)	
	)	
both d/b/a Arena Auto	)	
Green Bay, Wisconsin	)	
	)	
PROCEEDINGS PURSUANT TO	)	
SECTION 113 (a) (1)	)	
OF THE CLEAN AIR ACT.	)	

**STATUTORY AUTHORITY**

The following Order is issued pursuant to Section 113(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a) against Respondents, Lee and David Michaletz both doing business (d/b/a) as Arena Auto, Green Bay, Wisconsin. 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).

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.

**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 602(b) of the Act, 42 U.S.C. § 7671a(b), requires the Administrator to publish lists of Class II substances containing specified chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons, respectively, and to add to those lists any other substance that is known or may reasonably be

anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

6. 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.

7. 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).

8. 40 C.F.R. § 82.174(c) states that "no 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."

9. 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 those fittings must meet when existing air conditioner service ports are retrofitted.

10. 40 C.F.R. Part 82 Subpart G, Appendix D also states that when performing a retrofit, the person conducting the retrofit must apply to the air conditioning system in the engine compartment a label containing specified information.

11. 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**

12. Respondent Lee Michaletz is co-owner of a facility known as Arena Auto located at 753 Lombardi Avenue, Green Bay, Wisconsin.

13. Respondent Dave Michaletz is co-owner of a facility known as Arena Auto located at 753 Lombardi Avenue, Green Bay, Wisconsin.

14. Respondents repair or service motor vehicles for consideration.

15. On or about August 26, 1998, Respondent Lee Michaletz purchased one 25-pound cylinder of McCool Chill-It.

16. McCool Chill-It is a Class II ozone depleting refrigerant blend.

17. During 1998, Respondents charged one or two motor vehicle air conditioners with the McCool Chill-It.

18. Respondents did not use properly trained and certified technicians to charge the motor vehicle air conditioners with McCool Chill-It. .

19. Respondents did not use properly approved recovery equipment.

20. Respondents did not install fittings unique to McCool Chill-It on the service ports of the motor vehicle air conditioners that were charged with McCool Chill-It.

21. Respondents did not place the required labels on the motor vehicle air conditioners that were charged with McCool Chill-It.

22. Arena Auto is a Wisconsin Company with a place of business at 753 Lombardi Avenue, Green Bay, Wisconsin.

23. Lee Michaletz, and David Michaletz are both "persons" pursuant to 40 C.F.R. § 82.32.

24. On May 25, 1999, Margaret M. Guerriero, Acting Director, Air and Radiation Division, Region 5, issued a Finding of Violation (FOV) to Arena

Auto and Respondents pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

**Finding of Violations**

25. Respondents violated Section 609 of the Act, 42 U.S.C. § 7671h, and its implementing regulations at Subpart B, 40 C.F.R. § 82.34(a)(1) and 82.34(a)(2) by performing service on motor vehicle air conditioners without technician certification and not using appropriate recovery equipment.

26. Respondents violated Section 612 of the Act, 42 U.S.C. § 7671k, and its implementing regulations at 40 C.F.R. Part 82 Subpart G, Appendix D by charging several vehicles with refrigerant without installing a set of fittings unique to that refrigerant, and without affixing the required warning labels to the air conditioner units.

**IT IS HEREBY ORDERED THAT:**

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

28. Respondents 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.

29. Prior to the performing of any further activities involving the maintenance, service, and repair of motor vehicle air conditioners containing

refrigerant covered by Section 609(c) of the Act, 42 U.S.C. § 7671h and 40 C.F.R., Part 82, Respondents shall provide U.S. EPA with a copy of each employee's technician certification card and a signed statement certifying that Respondents are using U.S. EPA-approved refrigerant recycling equipment in accordance 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

30. Failure to comply with the terms of this Compliance order may subject Respondents to civil penalties and/or further enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.

31. Pursuant to 40 C.F.R. Part 2, subpart B, Arena Auto is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this 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.

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

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

34. 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).

35. 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.

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

9/20/99  
Date

  
Margaret M. Guerriero, Acting 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 Lee Michaletz and David Michaletz

CERTIFICATE OF SERVICE

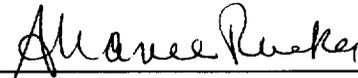
I hereby certify that a copy of the ADMINISTRATIVE COMPLIANCE ORDER was sent via certified mail, return receipt requested, to the respondent by placing it in the custody of the United States Postal Service addressed as follows:

David Michaletz, Owner  
Arena Auto  
753 Lombardi Avenue  
Green Bay, Wisconsin 54304

The and a copy was mail to:

Dave Hildreth, Regional Leader  
Wisconsin Department of Natural Resources  
1125 N. Military Avenue  
P.O. Box 10448  
Green Bay, Wisconsin 54307

9/21/99  
\_\_\_\_\_  
Date

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

9140 777 045  
\_\_\_\_\_  
Certified Mail Number

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