

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Stephen H. Ritchie, President
Ritchie Engineering Company, Inc.
10950 Hampshire Avenue South
Minneapolis, Minnesota 55438-2306

)
) Docket No. **CAA-5- 2000-0 19**
)
) **Proceeding to Assess**
) **Administrative Penalty**
) **under Section 113(d) of the**
) **Clean Air Act,**
) **42 U.S.C. § 7413(d)**

ADMINISTRATIVE COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
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 Ritchie Engineering Company, Inc., a corporation with its headquarters located in Minneapolis, Minnesota and a manufacturing facility located in Garrett, Indiana.

STATUTORY AND REGULATORY BACKGROUND

4. Section 608(a)(2) of the Act, 42 U.S.C. § 7671g, authorizes the United States Environmental Protection Agency ("U.S. EPA") to promulgate regulations establishing standards and requirements regarding recycling and recovery equipment.
5. 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 were codified at 40 C.F.R. Part 82, Subpart F (§ 82.150 et seq.).

6. "Person" means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof. 40 C.F.R. § 82.152.
7. "Certified refrigerant recovery or recycling equipment" means equipment certified by an approved equipment testing organization to meet the standards in 40 C.F.R. § 82.158(b) or (d), equipment certified pursuant to 40 C.F.R. § 82.36(a), or equipment manufactured before November 15, 1993, that meets the standards in 40 C.F.R. § 82.158(c), (e), or (g). 40 C.F.R. § 82.152.
8. 40 C.F.R. § 82.158(h) requires manufacturers and importers of equipment certified under paragraphs (b) and (d) of this section to place a label on each piece of equipment stating the following:

THIS EQUIPMENT HAS BEEN CERTIFIED BY [APPROVED
EQUIPMENT TESTING ORGANIZATION] TO MEET U.S. EPA'S
MINIMUM REQUIREMENTS FOR RECYCLING OR RECOVERY
EQUIPMENT INTENDED FOR USE WITH [APPROPRIATE CATEGORY
OF APPLIANCE].

The label shall also show the date of manufacture and the serial number (if applicable) of the equipment. The label shall be affixed in a readily visible or accessible location, be made of a material expected to last the lifetime of the equipment, present required information in a manner so that it is likely to remain legible for the lifetime of the equipment, and be affixed in such a manner that it cannot be removed from the equipment without damage to the label.

9. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of Sub-chapter VI of the Act, including Section 608, or any rule promulgated under this Sub-chapter, and for violations of a requirement or prohibition of any order issued under the Act, that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

GENERAL ALLEGATIONS

10. Respondent's corporate headquarters are located at 10950 Hampshire Avenue South Minneapolis, Minnesota 55438-2306 Minneapolis, Minnesota. Respondent's manufacturing facility is located at 1120 Fuller Drive, Garrett, Indiana.
11. Respondent has been manufacturing refrigerant recovery and recycling equipment at its Garrett, Indiana facility since 1992. Section 608(a)(2) of the Act, 42 U.S.C. § 7671g, authorizes the U.S. EPA to promulgate regulations establishing standards regarding recycling and recovery equipment, including the equipment manufactured by Respondent.
12. Respondent manufactures Refrigerant Recovery System Model R60, which is subject to the regulations at 40 C.F.R. Part 82, Subpart F. Prior to January 13, 2000, the label for the Model R60 did not comply with the wording requirements of 40 C.F.R. § 82.158(h). Instead, the label stated in relevant part: "This equipment has been certified by an independent testing organization to meet EPA requirements for recovery equipment."

Count 1

13. Complainant incorporates paragraphs 1 through 12 of this complaint, as if set forth in this paragraph.
14. On January 13, 2000, U.S. EPA issued Administrative Order CAA-ACO-7-2000-0009 to Respondent (the "Order"). The Order required Respondent to comply with the requirements of Section 608(a) of the Act, 42 U.S.C. § 7671 g(a), and the National Recycling and Emissions Reduction Rule, promulgated thereunder, and codified at 40 C.F.R. Part 82, Subpart F.
15. Respondent received the Order on January 21, 2000. The Order was effective January 21, 2000.
16. Paragraph 1 of the Order required Respondent to certify in writing within 30 days of the effective date of the Order that it "is now placing labels on each piece of equipment" that included all of the required language set forth in 40 C.F.R. § 82.158(h).
17. By a letter dated February 18, 2000, Ajit Ramachandran of Ritchie Engineering stated that "Ritchie Engineering will

place labels on each piece of equipment, which includes the name of the testing agency and the appropriate category of appliance."

18. Ritchie Engineering did not comply with the requirement in Paragraph 1 of the Order that it certify compliance.
19. Paragraph 2 of the Order required Respondent to certify in writing within 30 days of the effective date of the Order that it "is now placing labels on each piece of equipment which state the specific category of appliance subject to Section 608 requirements for which the equipment is appropriate, rather than listing the refrigerant types with which the equipment may be used."
20. By a letter dated February 18, 2000, Ajit Ramachandran of Ritchie Engineering stated that "I also certify that Ritchie Engineering will place labels on all units and state on such labels the specific category of appliance subject to Section 608 for which the equipment is appropriate."
21. Ritchie Engineering did not comply with the requirement in Paragraph 2 of the Order that it certify compliance.
22. Paragraph 3 of the Order required Respondent to certify in writing within 30 days of the effective date of the Order that it is "now placing labels on each piece of equipment made of a material expected to last the lifetime of the equipment."
23. By a letter dated February 18, 2000, Ajit Ramachandran of Ritchie Engineering stated that "I will also certify that Ritchie will place a label that will last a reasonable amount of time on the machine. . . . I will change my label material and the adhesive used to comply with UL's standard on this matter."
24. Ritchie Engineering did not comply with the requirement in Paragraph 3 of the Order that it certify compliance.
25. Paragraph 4 of the Order required Respondent to certify in writing within 30 days of the effective date of the Order that it is "now placing labels on each piece of equipment in a manner that is likely to remain legible for the lifetime of the equipment, including the date of manufacture label."
26. By a letter dated February 18, 2000, Ajit Ramachandran of Ritchie Engineering stated that "I will certify to the fact

that Ritchie Engineering will place labels on each piece of equipment so as to be legible for the lifetime of the equipment."

27. Ritchie Engineering did not comply with the requirement in Paragraph 4 of the Order that it certify compliance.
28. Paragraph 5 of the Order required Respondent to "provide a sample of the correct label now being used by Ritchie which complies with the requirements of § 82.158(h)" within 30 days of the effective date of the Order.
29. By a letter dated February 18, 2000, Ajit Ramachandran of Ritchie Engineering stated that "I will provide a sample of the label as soon as I have an approved sample from my vendor. I expect this to take about 4 weeks."
30. Ritchie Engineering did not comply with the requirement in Paragraph 5 of the Order that it provide a sample of the correct label within 30 days.

Count 1

31. Complainant incorporates paragraphs 1 through 30 of this complaint, as set forth in this paragraph.
32. On May 10, 2000, Doyle Houser, Environmental Manager, Air Compliance Section of the Indiana Department of Environmental Health ("IDEM") inspected Respondent's facility in Garrett, Indiana (the "facility") at the request of U.S. EPA. During this inspection, Mr. Houser interviewed Ajit Ramachandran, Vice President of Engineering and Manufacturing for Respondent.
33. At the time of the May 10, 2000, inspection, Respondent's facility was still manufacturing refrigerant recovery equipment, including Model R60, that is subject to the requirements of 40 C.F.R. Part 82, Subpart F.
34. At the time of the May 10, 2000, inspection, Respondent was improperly labeling its Refrigerant Recovery System Model R60.
35. At the time of the May 10, 2000, inspection, Respondent was using labels on its Model R60 that U.S. EPA had already determined were in violation of 40 C.F.R. § 82.158(h).

36. Respondent knew of U.S. EPA's determination that the labels it was using at the time of the May 10, 2000, inspection were in violation of 40 C.F.R. § 82.158(h) no later than January 21, 2000, when Respondent received Administrative Order CAA-ACO-7-2000-0009 ordering it to comply with 40 C.F.R. § 82.158(h).
37. On March 13, 2000, Julius Banks of the Stratospheric Protection Division, Office of Air and Radiation, U.S. EPA, sent a letter to manufacturers of recycling and recovery equipment, including a letter addressed to Mr. Ajit Ramachandran at Respondent's Garrett, Indiana facility.
38. Mr. Banks' letter reminded equipment manufacturers, including Respondent, of the labeling requirements at 40 C.F.R. § 82.158(h).
39. Mr. Banks' letter stated in part that the labeling requirement at 40 C.F.R. § 82.158(h) "is the responsibility of the equipment manufacturer. The U.S. EPA third party certifier (i.e., Underwriters Laboratory or the Air-Conditioning and Refrigeration Institute) of the recycling/recovery equipment is not responsible for labeling. The labels applied by these organizations upon equipment certification do not satisfy the U.S. EPA labeling requirements."
40. On June 23, 2000, U.S. EPA issued Ritchie an Administrative Order to Cease and Desist Improper Labeling of Refrigerant Recovery Systems and Improper Sale of Uncertified Systems, EPA-5-00-IN-5 (the "Cease and Desist Order").
41. On June 30, 2000, Mr. Doyle House of IDEM inspected Respondent's facility in Garrett, Indiana. The label Respondent provided to Mr. Houser on June 30, 2000, did not list the specific appliance with which the model is approved for use as required by 40 C.F.R. § 82.158(h). Instead, this label stated in relevant part: "Intended for use with R-12, R-22, R-134a, R-500, R-502."
42. R-12, R-22, R-134a, R-500, and R-502 are not appliances or categories of appliance with which the Model R60 was approved for use.
43. On July 6, 2000, U.S. EPA held a conference call with representatives of Ritchie Engineering, Inc. to discuss the Cease and Desist order.

44. On July 19, 2000, U.S. EPA received a letter from Ritchie dated July 14, 2000. Ritchie indicated that they had designed and procured add-on labels by which to supplement the language found on Ritchie's model R-60 label. Ritchie stated that they would provide the U.S. EPA with a sample of the add-on label as soon as they obtained one.
45. On July 27, 2000, U.S. EPA received a sample of Ritchie's new label for the model R-60 recovery machine. The add-on label language is as follows:

"This equipment has been certified by Underwriters Laboratories to meet U.S. EPA's minimum requirements for recovery equipment intended for use with High pressure and Very High pressure appliances. Intended for use with R-12, R-134a, R-500 and R-502."

46. Prior to July 27, 2000, Ritchie failed to properly label its Refrigerant Recovery System Model R-60, trade name "Yellow Jacket", prior to distribution as required by the Standards for Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F.

Proposed Civil Penalty

47. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
48. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$49,335. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 ("penalty policy") and Appendix 10 of the Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant, June 1, 1994. Enclosed with this complaint is a copy of the penalty policy.
49. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the

Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

50. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules), codified at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

51. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

52. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Alan Walts, Assistant Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Alan Walts at (312) 353-8894. Alan Walts' address is:

Alan Walts (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

53. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Alan Walts and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

54. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 55 through 60 below.

Answer

55. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 51, above, and must serve copies of the written answer on the other parties.
56. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

57. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.
58. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.
59. Respondent's answer must also state:
 - a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. the basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing as discussed in paragraph 54 above.
60. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

61. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Alan Walts at the address or phone number specified in paragraph 52, above.
62. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue

simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

63. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9-29-00

Date



Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5- 2000-019

In the Matter of Ritchie Engineering Company, Inc.
Docket No. **CAA-5-2000-019**

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number **CAA-5-2000-019** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" as codified at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Stephen H. Ritchie, President
Ritchie Engineering Company, Inc.
19050 Hampshire Avenue South
Minneapolis, Minnesota 55438-2306

Ann Foss, Enforcement Manager
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155-4194

on the 29th day of September, 2000.

Loretta Shaffer
Loretta Shaffer
AECAS (MN-OH)

CERTIFIED MAIL RECEIPT NUMBER: P140 897 049

REC-29 02:41