

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Lee Michaletz;
David Michaletz

both d/b/a Arena Auto
Green Bay, Wisconsin

PROCEEDINGS PURSUANT TO
SECTION 113 OF THE CLEAN AIR
ACT, 42 U.S.C. § 7413

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) **FINDING OF VIOLATION**
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FINDING OF VIOLATION

The Administrator of the United States Environmental Protection Agency (U.S. EPA) hereby notifies the State of Wisconsin and Lee Michaletz and David Michalitz (Respondents) doing business as Arena Auto that the Administrator of the U.S. EPA finds Respondents have violated the following provisions of the Clean Air Act (the Act) at Respondents' facility at 753 Lombardi Avenue, Green Bay, Wisconsin, as amended, 42 U.S.C. §§ 7401 through 7671q, and its regulations:

- A. Section 609 of the Act, 42 U.S.C. § 7671h, and its implementing regulations at 40 C.F.R. Part 82, Subpart B; and
- B. The regulations implementing Section 612 of the Act, 42 U.S.C. § 7671k, at 40 C.F.R. Part 82, Subpart G, Appendix D.

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:

[n]o 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 "[n]o 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 further states that when a performing a retrofit, the person conducting the retrofit must apply to the air conditioning system in the engine compartment a label containing specified information.

STATEMENT OF FACTS

11. Respondent Lee Michaletz is co-owner of a facility located at 753 Lombardi Avenue, Green Bay, Wisconsin.
12. Respondent Dave Michaletz is co-owner of a facility located at 753 Lombardi Avenue, Green Bay, Wisconsin
13. Respondents repair or service motor vehicles for consideration.
14. During 1998, Respondent Lee Michaletz purchased one 25-pound cylinders of McCool Chill-It.
15. McCool Chill-It is a Class II ozone depleting refrigerant substitute blend.
16. During 1998, Respondents charged one or two motor vehicle air conditioners with the McCool Chill-It.
17. Respondents did not use properly trained and certified technicians to charge the motor vehicle air conditioners with McCool Chill-It.
18. Respondents did not use properly approved recovery equipment.
19. 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.
20. Respondents did not place the required labels on the motor

vehicle air conditioners that were charged with McCool Chill-It.

FINDINGS OF VIOLATION

21. Each instance in which Respondents serviced a motor vehicle air conditioner with McCool Chill-It without using properly trained and certified technicians is a violation of Section 609(c) of the Act, 42 U.S.C. § 7671h and 40 C.F.R. § 82.34(a)(2).
22. Each instance in which Respondents serviced a motor vehicle air conditioner with McCool Chill-It without using properly approved recovery equipment is a violation of Section 609(c) of the Act, 42 U.S.C. § 7671h and 40 C.F.R. § 82.34(a)(1).
23. Each instance in which Respondents failed to install the required unique fittings on a motor vehicle air conditioner they charged with McCool Chill-It is a violation of 40 C.F.R. § 82.174(c).
24. Each instance in which Respondents failed to apply a warning label to a motor vehicle air conditioner they charged with McCool Chill-It is a violation of 40 C.F.R. § 82.174(c).

WHEREFORE, the U.S. EPA hereby notifies Respondents and the State of Wisconsin that Respondents violated the Clean Air Act in the manner set forth in this Finding of Violation.

5/23/99
Date


FOR
Margaret Guerriero, Acting Director
Air and Radiation Division

Lee Michalitz
Green Bay, Wisconsin

CERTIFICATE OF MAILING

I, Shanee Rucker, do hereby certify that a Finding of Violation and a Request for Information pursuant to the Clean Air Act was sent by Certified Mail, Return Receipt Requested, to:

Lee Michalitz	David Michalitz
Arena Auto	Arena Auto
753 Lombardi Ave	753 Lombardi Ave
Green Bay, Wisconsin 54304	Green Bay, Wisconsin 54304

I also certify that copy of the Finding of Violation and Request for Information pursuant to the Clean Air Act were sent by first class mail to:

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

on this 25 day of May, 1999.

P 140 777 001
CERTIFIED MAIL RECEIPT NUMBER

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)