



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2009

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Thomas Toy, President
Toy's Scrap and Salvage Corporation
8010 Olson Drive
Eau Claire, Wisconsin 54703

Dear Mr. Toy:

Enclosed is your copy of the signed Administrative Consent Order (ACO) which resolves the violations of the safe disposal requirements found at 40 C.F.R. 82.156(f) identified in the ACO.

The terms of this ACO became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this ACO may subject Toy's Scrap and Salvage Corporation to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Richard Clarizio, Associate Regional Counsel, at (312) 886-0559, or Ms. Lynne Roberts, of my staff, at (312) 886-0250.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosures: ACO

cc: Lynne Roberts (AE-17J)
Richard Clarizio (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-09-113(a)-WI-02
)	
Toy's Scrap and Salvage Corporation)	Proceeding Under Sections 113(a)(3)
Eau Claire, Wisconsin)	and 114(a)(1)
)	of the Clean Air Act
)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)
)	
_____)	

Administrative Consent Order

1. The Director of the Air and Radiation Division ("Director"), U.S. Environmental Protection Agency, Region 5 ("EPA"), and Toy's Scrap and Salvage Corporation ("Toy's") are entering into this Administrative Compliance Order ("Order") under Section 113(a)(3) and 114(a)(1) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Title VI of the Act to any person who has violated or is violating any requirement of Title VI of the Act. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region V, has delegated his order authority to the Director pursuant to EPA Region V Delegation 7-6-A.

3. Section 114(a)(1) of the Act, 42 U.S.C. §7414(a) authorizes the Administrator of EPA to require any person who owns or operates an emission source to

make reports and provide information required by the Administrator. The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region V, has delegated his information gathering authority to the Director pursuant to EPA Region V Delegation 7-8.

4. According to section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), an order issued under section 113(a)(3)(B) shall not take effect until the person to whom it is issued has had an opportunity to confer with EPA concerning the alleged violations. The order must state with reasonable specificity the nature of the violations and the time for compliance taking into consideration the seriousness of the violation and any good faith efforts to comply. The order shall require compliance as expeditiously as practicable but in no event longer than one year after the date of issuance of the order.

5. Title VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(c), 42 U.S.C. § 7671(c), prohibits the knowing venting of class I or II substances to the environment. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerant containing chlorofluorocarbons (“CFCs”). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated regulations covering the safe disposal of CFCs from small appliances and motor vehicles and ensuring that no person vents class I or II substances to the environment. The regulations are found in Subpart F of Part 82 of Title 40 of the Code of Federal Regulations, 40 C.F.R. Part 82, Subpart F.

6. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances (as defined in 40 C.F.R. § 82.152) and motor vehicle air conditioner (“MVAC”) units must either recover the refrigerant in accordance with specific procedures or verify with signed statements (“verification statements”) that the refrigerant was properly evacuated and recovered prior to receipt of the small appliance or MVAC unit. See 40 C.F.R. § 82.156(f). If verification statements are used then the suppliers of the small appliance or MVAC units must be notified of the need to properly evacuate and recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). Verification statements must be kept on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m). It is a violation of the regulations for someone to accept a signed verification statement if the person knew or had reasons to know that such signed statement is false. See 40 C.F.R. § 82.154(n). Cut or missing refrigerant lines on a small appliance may be an indication that class I or II refrigerants were vented to the environment. See, May 14, 1993 Federal Register, 58 28660.

II. Findings

7. Toy’s owns and operates a scrap metal recycling facility at 8010 Olson Drive, Eau Claire, Wisconsin. Toy’s is a corporation organized and doing business in Wisconsin. Toy’s is a person as defined by 40 C.F.R. § 82.156.

8. On September 30, 2008, EPA issued to Toy’s a request for information pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a). EPA requested information regarding Toy’s business practices related to the safe disposal requirements found in 40 C.F.R. Part 82, Subpart F.

9. On October 15, 2008, Toy’s responded to EPA’s information request.

10. Toy's accepts small appliances and MVAC units. These items may contain or once contained refrigerant. Toy's has a "Freon sniffer" to assist it in determining whether these items contain refrigerants at the time that they receive them at their facility. If Toy's determines that an item has refrigerant it employs a third party to recover the refrigerant. If Toy's determines that an items does not have refrigerant Toy's then determines if the supplier properly verifies that refrigerant was recovered. Toy's rejects items where the supplier has not properly verified that refrigerant was recovered. Toy's crushes small appliances and MVAC units at its facility after refrigerant has been recovered or it has determined that the supplier properly verified that refrigerant has been recovered.

11. From September 1, 2007, to the present Toy's has not owned equipment for the recovery of refrigerant from the small appliances or MVAC units it receives.

13. From September 1, 2007 to September 1, 2008, Toy's did not have written verification statements or an equivalent contract for the safe removal and disposal of refrigerants with the third party it employed to recover refrigerant.

15. From September 1, 2007 to September 1, 2008, Toy's did not collect written verification statements or an equivalent contract for the small appliances or MVAC units it received from its suppliers.

16. Toy's presently requires suppliers to provide written verification of recovery or an equivalent contract for frequent suppliers of small appliances and MVAC units. It also requires a written contract of the third parties that it uses to recover refrigerant.

16. Toy's is a person who takes the final step in the disposal process of a small appliances, room air conditioners, MVAC, or MVAC-like appliance and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

III. Compliance Program and Agreement

17. Toy's agrees to comply with 40 C.F.R. Part 82. Additionally, Toy's agrees to implement the following procedures for one year after the effective date of this Order for any small appliance or MVAC unit that Toy's receives at its facility:

18. Within thirty (30) days of receipt of this Order, Toy's agrees to arrange for a third party to properly recover any remaining refrigerant from each small appliance and MVAC unit it accepts that it determines contains refrigerant. Toy's agrees that it will require the third party to recover the refrigerant in accordance with 40 C.F.R. Section 82.156(f)(1) or verify that the refrigerant has been previously evacuated from the small appliance, MVAC or shipment of small appliances or MVACs in accordance with Section 82.156(f)(2).

19. For all small appliances and MVAC units that Toy's arranges for a third party to recover the refrigerant Toy's agrees that it will develop, use, and maintain for one year a log which contains the following information: the date refrigerant was removed, how much was recovered, the type of refrigerant recovered, and the name of the person responsible for recovering the refrigerant. Toy's will also have a refrigerant recovery contract in place with each third party it has recovering the refrigerant. The refrigerant recovery contract will be signed by both parties and contain a specific time frame for performance. This contract will not automatically renew. The contract will

require refrigerant recovery in accordance with the procedures identified in 40 C.F.R. 82.156(g) and (h). Toy's will use the written contract included as Attachment 1.

20. For each small appliance and MVAC unit that Toy's determines does not contain refrigerant, prior to accepting the item for processing at its facility, Toy's will obtain a written verification statement that the refrigerant has been properly evacuated from the unit. Toy's agrees that the verification statement will include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously had been recovered from the appliances in accordance with 40 C.F.R. Section 82.156(g) or (h), as applicable. Toy's agrees that the statement will include the name and address of the person who recovered the refrigerant, the date the refrigerant was recovered and a certification that the refrigerant was recovered in accordance with the procedures identified in 40 C.F.R. 82.156(g) or (h).. Toy's will have its suppliers use the verification statement included as Attachment 2 to this Order.

21. Toy's may use a contract, instead of a verification statement, for frequent suppliers of small appliances or MVAC units. If Toy's uses a contract as an equivalent to the verification statement pursuant to 40 C.F.R. Section 82.156(f)(2), Toy's agrees that the contract will identify the entity responsible for recovering equipment and the period of time covered by the contract. Toy's agrees that the contract will include enough information for EPA and Toy's to determine that the person recovering the refrigerant has knowledge of how the refrigerant is to be recovered in order to meet the requirements of 40 C.F.R. Section 82.156(g) or (h). Toy's will use the contract included as Attachment 1 to this Order.

22. Toy's agrees to maintain copies of the signed verification statements and equivalent contracts on site for three years in accordance with 40 C.F.R. Section 82.166(i) and (m).

23. In accordance with 40 C.F.R. Section 82.156(g), Toy's agrees that it will not knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances or MVACs while maintaining, servicing, repairing, or disposing of appliances. Toy's agrees that it will not accept any small appliance or MVAC where it has a reasonable basis to believe the refrigerant has been vented to the environment.

24. Toy's agrees that it will not accept small appliances with cut or missing refrigerant lines. Toy's agrees that it will not accept small appliances and verification statements from peddlers whom Toy's suspects falsified the information (e.g., identified themselves as being the person who recovered the refrigerant without verification of the date, equipment used and amount recovered). Toy's agrees that it will not accept small appliances where the peddler has indicated that the refrigerant leaked or where the refrigerant lines have been cut. For the purposes of this Order, peddlers are individuals who transport to Toy's shipments with 2-3 small appliances or MVAC units.

25. Toy's agrees that it will provide EPA with confirmation that the procedures set forth in this Section have been instituted by Toy's by providing the following to EPA within sixty (60) days of the effective date of this Order:

- a. a blank copy of the verification form Toy's uses to verify proper refrigerant recovery including fields to enter the name and address of the person who recovered the refrigerant and the date recovered;
- b. copies of signed, dated verification forms or equivalent contracts from the effective date of this Order until the date Toy's provides the confirmation required by this paragraph; and

c. a listing of all shipments of small appliances that it rejected because the refrigerant lines were cut or missing or the peddler identified itself as the entity responsible for refrigerant recovery from the effective date of this Order until the date Toy's provides the confirmation required by this paragraph. Toy's will provide an update to this list every three months after its first submission and until the Order is terminated.

IV. General Provisions

26. Toy's agrees to the terms of this Order.

27. Toy's neither admits nor denies the factual allegations contained within this Order. Toy's will not contest the authority of EPA and it to enter into this Order. Toy's waives any further opportunity to confer or have a hearing related to the subject matter of this Order.

28. This Order does not affect Toy's responsibility to comply with other federal, state, and local laws.

29. Toy's may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Toy's fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

30. 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. To aid in EPA's electronic record keeping efforts, EPA requests that responses to this Order be

provided without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

31. This Order does not restrict EPA's authority to enforce any violations of the Act.

32. Toy's failure to comply with this Order may subject Toy's to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413 and 40 C.F.R. Part 19.

33. The terms of this Order are binding on Toy's, its assignees, and successors unless otherwise modified by law. Toy's must give notice of this order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

34. EPA may use any information submitted pursuant to this Order in an administrative, civil, judicial, or criminal action.

35. This Order is effective on receipt of this Order by Toy's with the signature of the Director. This Order will terminate one year from the effective date, provided that Toy's has complied with all terms of the Order throughout its duration.

36. All reports required by this Order shall be sent to:

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

37. Toy's certifies that to the best of its knowledge it is complying fully with 40 C.F.R. Part 82.

38. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to pay its own costs and attorneys' fees incurred in relation to this action.

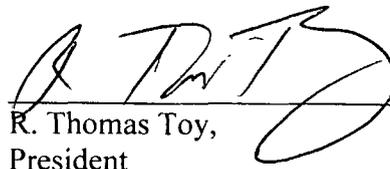
40. This Order constitutes the entire agreement between the parties as to the subject matter of this Order.

AGREED AS STATED ABOVE:

TOY'S SCRAP AND SALVAGE CORPORATION

9/28/2009

Date



R. Thomas Toy,
President

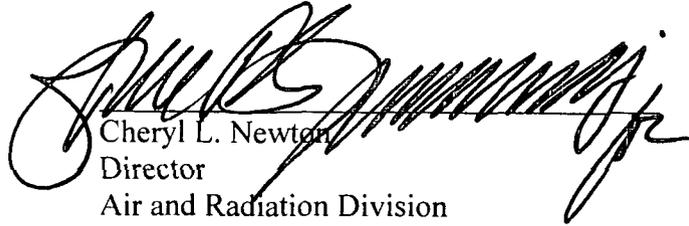
Toy's Scrap and Salvage Corporation

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/28/09

Date



Cheryl L. Newton
Director

Air and Radiation Division

ATTACHMENT I
FORM OF CONTRACT

AGREEMENT FOR THE RECOVERY OF REFRIGERANT

This Agreement is made _____, 20__ by and between Toy's Scrap and Salvage Corporation ("Toy's"), a Wisconsin corporation, and _____ ("Contractor"), a _____ corporation.

WHEREAS, Toy's owns and operates a scrap metal recycling facility at 8010 Olson Drive, Eau Claire, Wisconsin. Toy's is a corporation organized and doing business in Wisconsin; and

WHEREAS, in the course of its operations Toy's processes small appliances and motor vehicles; and

WHEREAS, Title VI of the federal Clean Air Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(c), 42 U.S.C. § 7671(c), prohibits the knowing venting of class I or II substances to the environment. Class I and II substances include refrigerant containing chlorofluorocarbons ("CFCs"). The United States Environmental Protection Agency ("EPA") has promulgated regulations covering the safe disposal of CFCs from small appliances and motor vehicles and ensuring that no person vents class I or II substances to the environment. The regulations are found in Subpart F of Part 82 of Title 40 of the Code of Federal Regulations, 40 C.F.R. Part 82, Subpart F.

WHEREAS, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances (as defined in 42 C.F.R. § 82.152) and motor vehicle air conditioner ("MVAC") units must either recover the refrigerant in accordance with specific procedures or verify with signed statements ("verification statements") that the refrigerant was properly evacuated and recovered prior to receipt of the small appliance or MVAC unit. See 40 C.F.R. § 82.156(f); and

WHEREAS, Contractor is the holder of a license or certification and is properly authorized to recover refrigerant from small appliances and MVAC units; and

WHEREAS, Toy's desires to contract with Contractor for the recovery of refrigerant from small appliances and MVAC units received by Toy's.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - Recovery of Refrigerant. Toy's hereby retains Contractor to recover refrigerant from small appliances and MVAC units received by Toy's in the normal course of business at Toy's facility at 8010 Olson Drive, Eau Claire, Wisconsin (the "Facility"). Contractor may perform the recovery at the Facility or at Contractor's place of business.

ARTICLE 2 - Commencement Date and Term. The term of this Agreement shall commence on _____, 20__ and unless earlier terminated by either party upon notice to the other party, shall terminate one (1) year later.

ARTICLE 3 - Contractor Obligations. Contractor will perform the refrigerant recovery in accordance with the procedures identified in 40 C.F.R. 82.156(g) and (h). Contractor shall be responsible for compliance with the procedures identified in 40 C.F.R. 82.156(g) and (h).

ARTICLE 4 - Recordkeeping. Contractor will provide Toy's with written documentation as to the refrigerant recovery performed by Contractor. Such documentation shall set forth the date on which each refrigerant recovery is performed and shall list each small appliance from which refrigerant was recovered and shall identify by motor vehicle identification number the motor vehicle containing each MVAC unit from which refrigerant was recovered.

ARTICLE 5 - Compensation. Toy's shall pay to Contractor such compensation for Contractor's services as is agreed upon from time to time by Toy's and Contractor. Contractor shall provide Toy's with written invoices for such services not less often than monthly.

ARTICLE 6 - Notices. Any notice required or desired to be given by or among the parties hereto, shall be deemed sufficient if deposited in the United States mail with postage prepaid, addressed to the parties at their addresses as shown below or at such addresses as the parties may designate from time to time in writing:

TOY'S: Toy's Scrap and Salvage Corporation
Attention R. Thomas Toy, President
8010 Olson Drive
Eau Claire, Wisconsin 54703

CONTRACTOR:
Attention:

ARTICLE 7 - Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and assigns.

ARTICLE 8 - Governing Law. This Agreement shall be construed and enforced pursuant to the laws of the State of Wisconsin.

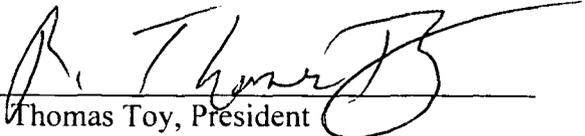
ARTICLE 9 - Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one agreement.

ARTICLE 10 - Amendment. No amendment to this Agreement shall be effective unless made in writing and signed by all parties hereto.

IN WITNESS WHEREOF the parties have executed this instrument or caused this instrument to be executed as of the date first indicated above.

Toy's Scrap and Salvage Corporation

By:



R. Thomas Toy, President

Contractor:

By: _____

Clean Air Act Verification Statement

Directions:

Complete statements 1 & 2.

Complete, sign, and date Seller Information section.

1. On today's date ____ / ____ / ____, I sold the following materials to Toy's Scrap and Salvage (**please check all that apply**):

- refrigerator(s)
- air conditioning unit(s)
- automobile(s) containing air conditioning units
- other _____

2. I certify that all refrigerants as defined in section 608 of the Clean Air Act and 40 CFR 82 within these materials were (**please check only one**):

recovered prior to my delivery to Toy's Scrap and Salvage in accordance with 40 CFR 82.156(g) or (h) (**please attach receipt and include the following information on the company that recovered the refrigerant**):

on Date: _____

by: Name _____

Address: _____

Telephone Number: _____

not recovered and needs to be recovered by technicians employed by Toy's Scrap and Salvage.

Buyer Information	Seller Information (<i>Please Print</i>)
<p>TOY'S SCRAP AND SALVAGE CORP. 8010 Olson Drive Eau Claire, Wisconsin [Phone]</p>	<p>Date: _____</p> <p>NAME: _____</p> <p>CORPORATION: _____</p> <p>STREET ADDRESS: _____</p> <p>CITY/STATE/ZIP: _____</p> <p>TELEPHONE NUMBER: _____</p>
<p>Accepted by:</p> <p>_____</p> <p>[NAME, Inc.]</p>	<p>SIGNATURE: _____</p>

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-WI-02, by Certified Mail, Return Receipt Requested, to:

Robert Thomas Toy, President
Toy's Scrap and Salvage Corporation
8010 Olson Drive
Eau Claire, Wisconsin 54703

and

Joseph R. Mirr
Ruder Ware, LLSC
402 Graham Avenue
P.O. Box 187
Eau Claire, Wisconsin 54702

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-WI-02, by First Class Mail to:

Tom Ponty
Wisconsin Department of Natural Resources
West Central Region
1300 West Clairemont
P.O. Box 4001
Eau Claire, Wisconsin 54702-4001

and

Bill Baumann
Wisconsin Department of Natural Resources
101 South Webster Street - AM/7
Madison, Wisconsin 53703

on the 29th day of September 2009.


Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8915 9259 - Robert Thomas Toy
7001 0320 0005 8915 9396 - Joseph R. Mirr