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

AUG 17 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hugh Ashlock
Member
Dimond Center, LLC
800 East Dimond Boulevard, Suite 3-500
Anchorage, Alaska 99515

Dear Mr. Ashlock:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number **CAA-05-2016-0036** with Dimond Center, LLC ("Dimond "). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 17, 2016. Pursuant to paragraph 33 of the CAFO, Dimond must pay the civil penalty within 30 days of the date the CAFO is filed. Your payment must include the case docket number.

If you have any questions regarding the CAFO, please contact Charles Hall of my staff at (312) 353-3443 or by e-mail at hall.charles@epa.gov or Andre Daugavietis, Associate Regional Counsel at (312) 886-6663 or daugavietis.andre@epa.gov.

Thank you for your cooperation.

Sincerely,

Brian Dickens

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section Minnesota/Ohio

cc: Edward J. Kowalski, U.S. EPA Region 10

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: Dimond Center, LLC Anchorage, Alaska **Respondent.**	))))))))	**Docket No.** **CAA-05-2016-0036** **Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**

REGIONAL HEARING CLERK
RECEIVED
AUG 17 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Dimond Center, LLC, a limited liability corporation doing business in the State of Alaska.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and their right to appeal this CAFO.

Statutory and Regulatory Background

9. Pursuant to Section 604 and 606 of the CAA, 42 U.S.C. §§ 7671c and 7671e, on May 10, 1995, EPA promulgated the Chlorofluorocarbon Production and Consumption Controls (CFC PCC) rules at 40 C.F.R. Part 82, Subpart A, at 40 C.F.R. §§ 82.1 through 82.24. See 60 Fed. Reg. 24986.

10. EPA amended the CFC PCC rules on August 4, 1998 (63 FR 41642), October 5, 1998 (63 FR 53290), November 28, 2000 (65 FR 70804), January 8, 2001 (66 FR 1471), February 11, 2002 (67 FR 6360), April 29, 2002 (67 FR 21134), January 21, 2003 (68 FR 2848), June 17, 2004 (69 FR 34031), December 23, 2004 (69 FR 77004), December 29, 2005 (70 FR 77047), July 20, 2006 (71 FR 41171), December 15, 2009 (74 FR 66445), August 5, 2011 (76 FR 47467), April 3, 2013 (78 FR 20027), March 26, 2014 (79 FR 16686), July 31, 2014 (79 FR 44311), and October 28, 2014 (79 FR 64286).

11. The CFC PCC rules prohibit the importation of a class II controlled substances for which EPA has apportioned baseline production and consumption allowances, in excess of the quantity of unexpended consumption allowances held by the importer for that control period.

12. Pursuant to Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), on May 14, 1993, EPA promulgated the Chlorofluorocarbon Recycling and Emissions Reduction (CFC RER) rules at 40 C.F.R. Part 82, Subpart F, at 40 C.F.R. §§ 82.150 through 82.169. See 58 Fed. Reg. 28712.

13. EPA amended the CFC RER rules on August 19, 1994 (See 59 Fed. Reg. 42956, 42957, and 42962), November 9, 1994 (see 59 Fed. Reg. 55925, 55926, and 55927), March 17, 1995 (see 60 Fed. Reg. 14610), May 9, 1995 (60 Fed. Reg. 24680), August 8, 1995 (60 Fed. Reg. 40439, 40440, and 40443), December 27, 1996 (61 Fed. Reg. 68508), February 29, 1996 (61 Fed. Reg. 7726), July 24, 2003 (68 Fed. Reg. 43806, 43807, 43808, and 43809), March 12, 2004 (69 Fed. Reg. 11978, 11979, 11980, and 11981), April 13, 2005 (70 Fed. Reg. 19278), January 11, 2005 (70 Fed. Reg. 1991 and 1992), June 18, 2008 (73 Fed. Reg. 34649), June 25, 2013 (78 Fed. Reg. 37977), May 23, 2014 (79 Fed. Reg. 29690), and October 28, 2014 (79 Fed. Reg. 64290).

14. The CFC RER rules require the owner or operator of industrial process refrigeration equipment to, among other things: 1, repair the industrial process refrigeration appliance such that the annual leak rate is reduced below 35 percent; 2, repair leaks within 30 days after discovery; and 3, perform initial verification tests and follow-up verification tests.

15. The Administrator of EPA may issue an administrative penalty order (APO) assessing a civil penalty of up to $37,500 per day for each violation, with a maximum of $295,000, for violations that occurred between January 12, 2009, and December 6, 2013, under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

18. Dimond Center LLC is a "person" as defined at 40 C.F.R. § 82.3.

19. Dimond Center LLC owns and operates industrial refrigeration equipment at a shopping mall at 800 East Dimond Boulevard, Anchorage, Alaska (the Facility).

20. On or about September 16, 2012, Shining Star Technology Development Limited, of Guangzhou, China, issued an invoice for the sale and shipment of 100 50-pound cylinders of R-22 to Dimond Center LLC, 800 E Dimond Boulevard, Suite 3-500, Anchorage, Alaska. The 100 cylinders contained a total of 2268 kilograms of R-22.

21. R-22 is a controlled substance, as defined by 40 C.F.R. Part 82, Subpart A, appendix B.

22. On or about October 17, 2012, United States Customs and Border Protection detained the shipment of R-22 at the port in Seattle, Washington.

23. Dimond Center LLC has not been apportioned any baseline consumption allowances under 40 C.F.R. § 82.19.

24. Dimond Center LLC's attempt to import, and its importation of, R-22 into Seattle, Washington, a place subject to the jurisdiction of the United States, makes it an importer of a controlled substance. 40 C.F.R. § 82.3.

25. Dimond Center LLC designates the industrial refrigeration equipment at the Facility as the Ice Chalet Compressor Skid. It normally contains more than 50 pounds of R-22.

26. The Ice Chalet Compressor Skid experienced leaks or emissions during the time period between May 6 and July 14, 2011, which resulted in an annual leak or emission rate greater than 35 percent.

27. Repairs performed by Respondents, if any, on the Ice Chalet Compressor Skid between May 6 and July 14, 2011, may or did not reduce the annual leak rate below 35 percent.

28. Initial verification tests, if any, performed by Respondents within 30 days following the discovery of each excessive leak rate failed to verify that the leak rate of the Ice Chalet Compressor Skid was below 35 percent.

29. Follow-up verification tests, if any, performed by Respondents within 30 days following the initial verification tests, if any, failed to verify that the repairs performed in conjunction with the tests had brought the leak rate of the Ice Chalet Compressor Skid below 35 percent.

30. On December 11, 2015, EPA issued a Finding of Violation (FOV) alleging violation of the CFC PCC rules by attempting to import 2,268 kilograms of R-22 into the United States, and alleging violation of the three work practice standards in the CFC RER rules.

31. On February 24, 2016, representatives of Dimond Center LLC and EPA discussed the FOV. Dimond Center LLC verifies that the FOV provided it with actual notice of the alleged violation, and that it had full opportunity to confer with EPA about the alleged violation prior to the issuance of this CAFO.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is $32,054.

33. Within 30 days after the effective date of this CAFO, Respondents must pay a $32,054 civil penalty by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

34. Respondents must send a notice of payment that states Respondents' names, the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

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

Andre Daugavietis, Associate Regional Counsel, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondents do not timely pay the civil penalty EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection

action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondents must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondents must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and in the FOV.

39. Other than as set forth in the above paragraph, this CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable or criminal sanctions for any violation of law.

40. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

41. Respondent certifies that it is complying fully with the CFC PCC and the CFC RER rules.

42. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind Respondent, its successors and assigns.

44. Each person signing this consent agreement 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.

45. Each party agrees to bear its own costs and attorney's fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

Dimond Center, LLC, Respondent

7/13/16
Date

Hugh Ashlock
Member
Dimond Center, LLC

United States Environmental Protection Agency, Complainant

8/9/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Dimond Center, LLC, Respondent
Docket No. CAA-05-2016-0036

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6/16/16

Date

Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of Dimond Center LLC
Docket No. CAA-05-2016-0036

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on August 17, 2016, in the following manner to the addressees:

Copy by certified mail Return-receipt:	Hugh Ashlock Member Dimond Center, LLC 800 East Dimond Boulevard, Suite 3-500 Anchorage, Alaska 99515
Copy by E-mail to Attorney for Complainant:	Steve Silver Ssilver628@aol.com
Copy by e-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: August 17, 2016

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

Certified Mail Receipt Number: 7011 1150 0000 2640 6806