



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

REPLY TO THE ATTENTION OF:

SEP 16 2009

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dean Brockenhauer, President
Timm's Auto Salvage
936 West 12th Street
St. Charles, Minnesota 55972

Dear Mr. Brockenhauer:

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 Timm's Auto Salvage 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)-MN-12
)	
Timm's Auto Salvage)	Proceeding Under Sections 113(a)(3)
St. Charles, Minnesota)	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 ("USEPA" or "EPA"), and Timm's Auto Salvage ("Timm's") are entering into this Administrative Compliance Order ("ACO" or "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 and motor vehicle air conditioner ("MVAC") units must either recover the refrigerant in accordance with specific procedures or verify with signed 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, 58 Federal Register, 28660 (May 14, 1993).

II. Findings

7. Timm's owns and operates a scrap metal recycling facility at 936 West 12th Street, St. Charles, Minnesota. Timm's is a corporation organized and doing business in Minnesota. Timm's is a person as defined by 40 C.F.R. § 82.156

8. On September 30, 2008, EPA issued to Timm'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 Timm's business practices related to the safe disposal requirements found in 40 C.F.R. Part 82, Subpart F.

9. On October 20, 2008, Timm's responded to EPA's information request.

10. Timm's accepted small appliances and MVAC units. These items contained or once contained refrigerant.

11. From September 1, 2007, to September 30, 2008, Timm's crushed appliances at its facility and at other locations MVACs and sent crushed small appliances and MVACs to Gerdau Ameristeel located in St. Paul, Minnesota. Timm's did not send verification statements to Gerdau Ameristeel with these shipments. It did not have a contract with Gerdau Ameristeel or its suppliers for the proper recovery of refrigerant prior to shipping them to Gerdau Ameristeel.

12. Timm's did not have equipment for the recovery of refrigerant from the small appliances it received. Timm's did have recovery equipment for MVACs at its facility. Timm's did not provide records of the amount of refrigerant it recovered.

13. Timm's did not have verification statements or an equivalent contract for the small appliances or MVAC units it received for which it did not recover refrigerant.

14. Timm's is a person who takes the final step in the disposal process of a small appliance, 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

15. Timm's agrees to comply with 40 C.F.R. Part 82. Additionally, Timm's agrees to implement the following actions for one year after the effective date of this order for any small appliance or MVAC that it receives at its facility.

16. Within thirty (30) days of receipt of this order, Timm's agrees to recover any remaining refrigerant from each small appliance and MVAC it accepts. Timm's agrees that it will 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 or MVAC or shipment of small appliances or MVACs in accordance with Section 82.156(f)(2).

17. If Timm's recovers refrigerant or arranges for it to be recovered by a third party, Timm'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. If Timm's uses a third party to remove refrigerant, it will 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).

18. If Timm's uses a verification statement then Timm'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. Timm'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). Timm's will have its suppliers use the verification statement included as Attachment 1 to this order.

19. If Timm's uses a contract as an equivalent to the verification statement pursuant to 40 C.F.R. Section 82.156(f)(2), Timm's agrees that the contract will identify the entity responsible for recovering equipment and the period of time covered by the contract. Timm's agrees that the contract will include enough information for EPA and Timm'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).

20. Timm'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).

21. In accordance with 40 C.F.R. Section 82.156(g), Timm'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. Timm'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.

22. Timm's agrees that it will not accept small appliances with cut or missing refrigerant lines. Timm's agrees that it will not accept small appliances and verification statements from peddlers whom Timm'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). Timm'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. Peddlers are individuals who transport to Timm's shipments with a few small appliances.

23. Timm's agrees that it will provide EPA with confirmation that the above requirements have been met within sixty (60) days of receipt of this order by providing the Agency with:

- a. a blank copy of the verification form Timm'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; 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.

IV. General Provisions

24. Timm's agrees to the terms of this order.

25. Timm's will not contest the authority of EPA and it to enter into this agreement. Timm's waives any further opportunity to confer or have a hearing.

26. This order does not affect Timm's responsibility to comply with other federal, state, and local laws.

27. Timm'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 U.S. 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 Timm's fails to assert a business confidentiality claim, U.S. 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.

28. 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 our electronic record keeping efforts, please provide your response to this order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

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

30. Failure to comply with this order may subject Timm'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.

30. The terms of this order are binding on Timm's, its assignees, and successors. Timm's must give notice of this order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA it has given the notice.

31. EPA may use any information submitted under this order in an administrative, civil, judicial, or criminal action.

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

33. 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

34. Timm's certifies that it is complying fully with 40 C.F.R. Part 82.

- 35. 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.
- 36. Each party agrees to pay its own costs and attorneys' fees in this action.
- 37. This order constitutes the entire agreement between the parties.

AGREED AS STATED ABOVE:

TIMM'S AUTO SALVAGE

By: Dean Bockenbauer Date: 9-3-09
Name: Dean Bockenbauer
Title: President

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/16/09
Date

[Signature] FOR
Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

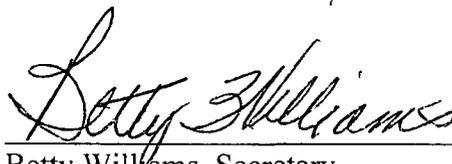
I, Betty Williams, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-MN-12, by Certified Mail, Return Receipt Requested, to:

Dean Brockenhauer, President
Timm's Auto Salvage
936 West 12th Street
St. Charles, Minnesota 55972

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-MN-12, by First Class Mail to:

Katie Koelfgen, Supervisor
Air Quality and Enforcement Unit
MPCA
520 Lafayette Road
St. Paul, MN 55155

on the 17th day of September 2009.



Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 03200005 8915 9389