



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

MAR 11 2016

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ian McLeod  
President and Chief Executive Officer  
Southeastern Grocers, LLC  
5050 Edgewood Court  
Jacksonville, Florida 32254

Re: Finding of Violation  
Southeastern Grocers, LLC d/b/a Winn Dixie  
Jacksonville, Florida

Dear Mr. McLeod:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Southeastern Grocers, LLC d/b/a Winn Dixie (Southeastern or you) under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). We find that you have violated the regulations for the Protection of Stratospheric Ozone located at 40 C.F.R. Part 82, Subpart F at five of your Jacksonville, Florida, grocery stores. EPA promulgated these regulations as required by Section 605 of the Clean Air Act, 42 U.S.C. § 7671d.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a civil or criminal judicial action.

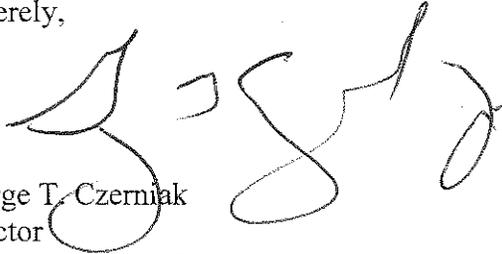
We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA is represented in this matter by Assistant Regional Counsel Christopher Grubb and by Environmental Engineer Charles Hall. You may contact Christopher by telephone at (312) 886-7187 or by e-mail at [grubb.christopher@epa.gov](mailto:grubb.christopher@epa.gov). You may contact Charles by

telephone at (312) 353-3443 or by e-mail at [hall.charles@epa.gov](mailto:hall.charles@epa.gov). You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Czerniak". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

George T. Czerniak  
Director  
Air and Radiation Division

Enclosure

cc: Todd Vitelli, Southeastern Grocers, LLC  
James Halaszynski, Southeastern Grocers, LLC  
Max Justice, Parker Poe

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>FINDING OF VIOLATION</b>
	)	
Southeastern Grocers, LLC d/b/a Winn Dixie	)	EPA-5-16-COE-2
Jacksonville, Florida	)	
	)	
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 et seq.	)	
_____	)	

**FINDING OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) finds that Southeastern Grocers, LLC (Southeastern) is violating the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* Specifically, Southeastern failed to comply with 40 C.F.R. Part 82, Subpart F, as follows:

**Regulatory Authority**

1. Pursuant to Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), 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.
2. The CFC RER rules apply to, among others, any person servicing, maintaining, repairing, or owning appliances, as those terms are defined at 40 C.F.R. § 82.152.
3. 40 C.F.R. § 82.152 defines “appliance” as any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.
4. 40 C.F.R. § 82.152 defines “commercial refrigeration,” in part, as “the refrigeration appliances utilized in the retail food and cold storage warehouse sectors. Retail food includes the refrigeration equipment found in supermarkets, convenience stores, restaurants and other food service establishments.”
5. 40 C.F.R. § 82.152 defines “leak rate” as “the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The leak rate is expressed in terms of the percentage of the appliance’s full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period.” The definition of leak rate specifies two methods to calculate the leak rate.
6. Method 1 is referred to as the “annualizing method” because it takes the quantity of refrigerant (percentage of charge) lost between charges and scales it up or down to calculate the quantity that would be lost over a year-long period. Method 2 is referred

to as the “rolling average method” because it calculates the leak rate by dividing the number of pounds of refrigerant added over past 365 days (or since leaks were last repaired, if that period is less than 1 year) by the number of pounds of refrigerant in a full charge of refrigerant for the commercial refrigeration equipment and converts that fraction to a percent.<sup>1</sup>

7. 40 C.F.R. § 82.152 defines “person” as “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.”
8. 40 C.F.R. § 82.152 defines “refrigerant” as “any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.”
9. 42 U.S.C. § 7671a lists class I and class II ozone-depleting substances. 42 U.S.C. § 7671a(b) names hydrochlorofluorocarbon-22 (HCFC-22) as a class II ozone-depleting substance.
10. Hydrochlorofluorocarbon-22, whose chemical name is chlorodifluoromethane, is a chlorofluorocarbon that is sold under the trade name R-22.
11. 40 C.F.R. § 82.152 defines “technician,” in part, as “any person who performs maintenance, service, or repair, that could be reasonably expected to release refrigerants from appliances, except for [motor vehicle air conditioners], into the atmosphere.”
12. 40 C.F.R. § 82.156(i)(1) sets forth, in part:

Owners or operators of commercial refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired in accordance with paragraph (i)(9) of this section, if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. . . . Repairs must bring the annual leak rate to below 35 percent.
13. 40 C.F.R. § 82.156(i)(5) sets forth, in part:

Owners or operators of comfort cooling appliances normally containing more than 50 pounds of refrigerant and not covered by paragraph (i)(1) or (i)(2) of this section must have leaks repaired in accordance with paragraph (i)(9) of this section if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. . . . Repairs must bring the annual leak rate to below 15 percent.
14. 40 C.F.R. § 82.156(i)(6) sets forth, in part:

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<sup>1</sup> See 70 Fed. Reg. 1975 (Jan. 11, 2005) for further discussion of the definition of leak rate.

Owners or operators are not required to repair leaks as provided in paragraphs (i)(1), (i)(2), and (i)(5) of this section if, within 30 days of discovering a leak greater than the applicable allowable leak rate, or within 30 days of a failed follow-up verification test, or after making good faith efforts to repair the leaks as described in paragraph (i)(6)(i) of this section, they develop a one-year retrofit or retirement plan for the leaking appliance.

15. 40 C.F.R. § 82.156(i)(9) sets forth, in part:

Owners or operators must repair leaks pursuant to paragraphs (i)(1), (i)(2) and (i)(5) of this section within 30 days after discovery, or within 30 days after when the leaks should have been discovered if the owners intentionally shielded themselves from information which would have revealed a leak....

16. 40 C.F.R. § 82.166(k) sets forth:

Owners/operators of appliances normally containing 50 or more pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. The owner/operator must keep records of refrigerant purchased and added to such appliances in cases where owners add their own refrigerant. Such records should indicate the date(s) when refrigerant is added.

17. On September 2, 2015, the Administrator of the Environmental Protection Agency delegated to the Region 5 Administrator, as the national ozone-depleting substances center of excellence manager, the authority to take action to enforce the federal requirements for stratospheric ozone protection in all U.S. Environmental Protection Agency regions, pursuant to 40 C.F.R. Part 82 and Title VI of the Clean Air Act.

#### **Findings of Fact**

18. Southeastern is a “person” as defined at 40 C.F.R. § 82.152.
19. On September 22, 2015, EPA issued a Clean Air Act Section 114 Request for Information (CAA 114 RFI) to Southeastern to determine whether Southeastern is complying with the Chlorofluorocarbon Recycling and Emissions Reduction rules in 40 C.F.R. Part 82, Subpart F, at 15 of its Winn Dixie grocery stores located in and around Jacksonville, Florida.
20. On December 4, 2015, Southeastern responded to the CAA 114 RFI.
21. Southeastern reported in Exhibit 1 of its December 4, 2015, response to the CAA 114 RFI, that it uses R-22 in the appliances listed below. Further, Southeastern reported the full charge for each appliance as summarized in Table 1.

Store Number	Type	Appliance	Full Charge
Winn Dixie #12	Commercial Refrigeration	Rack C	1300 pounds <sup>2</sup>
Winn Dixie #12	Commercial Refrigeration	Rack D	1100 pounds
Winn Dixie #89	Commercial Refrigeration	Rack A	800 pounds
Winn Dixie #89	Commercial Refrigeration	Rack B	800 pounds
Winn Dixie #89	Commercial Refrigeration	Rack B	1000 pounds
Winn Dixie #89	Commercial Refrigeration	Rack D	1000 pounds
Winn Dixie #107	Comfort Cooling	Rack E	200 pounds
Winn Dixie #145	Comfort Cooling	Rack E	360 pounds
Winn Dixie #2601	Comfort Cooling	Rack K	200 pounds

22. Southeastern owns and operates four commercial refrigeration appliances (CRAs) at Winn Dixie #12 which is located at 12333 Sago Avenue West, Jacksonville, Florida. Southeastern designates the CRAs as Rack A, Rack B, Rack C, and Rack D. Each rack uses R-22 as refrigerant and has a full charge greater than 50 pounds.
23. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack C at Winn Dixie #12 on the dates and in the quantities listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
1/10/2012	750	57.7%	57.7%
12/10/2013	500	38.5%	38.5%
3/20/2015	250		
3/22/2015	375	5264.4%	
6/30/2015	125		57.7%

24. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack D at Winn Dixie #12 on the dates and in the quantities listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
6/25/2013	125		
11/19/2013	625	119.4%	

<sup>2</sup> Southeastern's response to the CAA 114 RFI presents conflicting information about the full charge for Racks C and D at Winn Dixie #12. Table 1 of Southeastern's response indicates that Racks C and D have a full charge of 1300 pounds and 1100 pounds, respectively. However, Table 3-A indicates that Racks C and D each have a full charge of 800 pounds. Taking a conservative approach, EPA used 1300 pounds and 1100 pounds, respectively, in its leak rate calculations because a larger full charge corresponds with a lower leak rate. However, the leak rates for Racks C and D may be greater if the appliances in fact have a full charge of 800 pounds each.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
12/28/2013	125	90.0%	67.3%

25. Southeastern owns and operates four CRAs at Winn Dixie #89 which is located at 2261 Edgewood Avenue West, Jacksonville, Florida. Southeastern designates the CRAs as Rack A, Rack B, Rack C, and Rack D. Each rack uses R-22 as refrigerant and has a full charge greater than 50 pounds.

26. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack A at Winn Dixie #89 on the dates and in the quantities listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
2/12/2012	250		
8/8/2012	125		
12/4/2012	250	96.7%	78.1%
3/5/2014	125		
3/10/2014	250	2281.3%	
7/9/2014	125	47.1%	62.5%

27. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack B at Winn Dixie #89 on the dates and in the quantities listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
4/10/2012	375		
8/9/2012	125	47.1%	62.5%
4/30/2013	375	64.8%	62.5%
6/5/2013	350	443.6%	106.3%
6/25/2013	100	228.1%	118.8%
9/17/2013	225	122.2%	131.3%

28. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack C at Winn Dixie #89 on the dates and in the quantities listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
2/20/2013	225		
9/11/2013	125		
9/13/2013	125	2851.6%	59.4%

29. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack D at Winn Dixie #89 on the date and in the quantity listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
11/26/2014	650	65.0%	65.0%

30. Southeastern owns and operates two comfort cooling appliances (CCAs) at Winn Dixie #107 which is located at 5909 University Boulevard West, Jacksonville, Florida. Southeastern designates the CCAs as Rack E and Rack F. Each rack uses R-22 as refrigerant and has a full charge greater than 50 pounds.
31. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack E at Winn Dixie #107 on the date and in the quantity listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
9/12/2012	75	37.5%	37.5%

32. Southeastern owns and operates two CCAs at Winn Dixie #145 which is located at 248 Blanding Boulevard, Orange Park, Florida. Southeastern designates the CCAs as Rack E and Rack F. Each rack uses R-22 as refrigerant and has a full charge greater than 50 pounds.
33. As reported in Southeastern's response to the CAA 114 RFI, a technician added R-22 to Rack E at Winn Dixie #145 on the date and in the quantity listed on the following table. EPA calculated the resulting leak rates.

Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
9/13/2013	125	34.7%	34.7%

34. Southeastern owns and operates one CCA at Winn Dixie #2601 which is located at 1012 Edgewood Avenue North, Jacksonville, Florida. Southeastern designates the

CCA as Rack K. Rack K uses R-22 as refrigerant and has a full charge greater than 50 pounds.

35. As reported in Southeastern’s response to the CAA 114 RFI, a technician added R-22 to Rack K at Winn Dixie #2601 on the date and in the quantity listed on the following table. EPA calculated the resulting leak rates.

Table 10. R-22 Use and Leak Rates for Rack K at Winn Dixie #2601			
Date Refrigerant Added	Pounds of Refrigerant Added	Method 1 Leak Rate	Method 2 Leak Rate
6/26/2015	60	30%	30%

36. The 114 RFI asked Southeastern to state whether or not Southeastern has developed any retrofit or retirement plan for each leaking commercial refrigeration appliance or comfort cooling appliance for each of its stores. If Southeastern had developed such a plan, the 114 RFI asked Southeastern to provide a copy of the plan.
37. In its December 4, 2015, response, Southeastern stated, “At this time, Winn Dixie has not identified retrofit or retirement plans developed for the listed appliances.”
38. On April 28, 2015, at 9:02 a.m. EDT, the Assistant Store Director at Winn Dixie #12 created Work Order #29333462 and reported “Oil is leaking and dripping from one of the refrigeration lines in the seafood walk in freezer.” Southeastern assign a technician to respond to the work order.
39. Work Order #29333462 records that the technician added refrigerant but does not state the quantity of refrigerant that the technician added. The work order also does not identify whether the technician added refrigerant to Rack A, B, C, or D.
40. On May 11, 2015, at 7:05 p.m./ EDT, the Store Director at Winn Dixie #145 created Work Order #25961701. The work order states, “The store is warm and it feel (sic) like the A/C is not working anywhere on the salesfloor or backroom[.]” Southeastern assigned a technician to respond to the work order. The description of work performed states, “Leak checked and repaired leaks charges all 4 ckts to full sight glass replaced bad relays replaced bad contractors replaced bad condenser fan motor replaced LP line on LP switch compressor #3[.]”
41. Work Order #25961701 does not state the quantity of refrigerant that the technician added. Winn Dixie #145 has only one comfort cooling appliance.

**Finding of Violations**

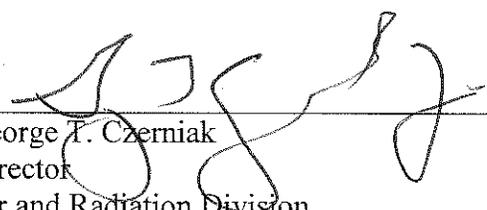
42. In 2012, 2013, and 2015, Southeastern failed to repair the leaks on Rack C at Winn Dixie #12 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).

43. In 2013, Southeastern failed to repair the leaks on Rack D at Winn Dixie #12 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).
44. In 2012 and 2014, Southeastern failed to repair the leaks on Rack A at Winn Dixie #89 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).
45. In 2012 and 2013, Southeastern failed to repair the leaks on Rack B at Winn Dixie #89 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).
46. In 2013, Southeastern failed to repair the leaks on Rack C at Winn Dixie #89 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).
47. In 2014, Southeastern failed to repair the leaks on Rack D at Winn Dixie #89 to bring the annual leak rate to below 35 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(1).
48. In 2012, Southeastern failed to repair the leaks on Rack E at Winn Dixie #107 to bring the annual leak rate to below 15 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(5).
49. In 2012, Southeastern failed to repair the leaks on Rack E at Winn Dixie #145 to bring the annual leak rate to below 15 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(5).
50. In 2015, Southeastern failed to repair the leaks on Rack K at Winn Dixie #2601 to bring the annual leak rate to below 15 percent, and Southeastern failed to develop a 1-year retrofit or retirement plan for Rack C according to 40 C.F.R. § 82.156(i)(6). Southeastern thereby violated 40 C.F.R. § 82.156(i)(5).
51. Southeastern failed to keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added, for service conducted at Winn Dixie #12 on or about April 28, 2015, in violation of 40 C.F.R. § 82.166(k).

52. Southeastern failed to keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added, for service conducted at Winn Dixie #145 on or about May 11, 2015, in violation of 40 C.F.R. § 82.166(k).

Date

3/11/16

  
George T. Czerniak  
Director  
Air and Radiation Division

## CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Finding of Violation, No. EPA-5-16-COE-2, by Certified Mail, Return Receipt Requested, to:

Ian McLeod  
President and Chief Executive Officer  
Southeastern Grocers  
5050 Edgewood Court  
Jacksonville, Florida 32254

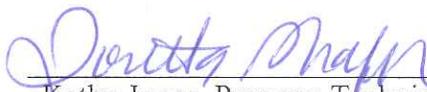
I also certify that I sent copies of the Finding of Violation by first-class mail to:

James Halaszynski  
Senior Manager of Development and Compliance  
Southeastern Grocers, LLC  
5050 Edgewood Court  
Jacksonville, FL 32254

Todd Vitelli  
Director, Maintenance Field Services  
Southeastern Grocers, LLC  
5050 Edgewood Court  
Jacksonville, FL 32254

Max Justice  
Parker, Poe, Adams, & Bernstein, LLP  
Three Wells Fargo Center  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202

on the 11 day of March 2016

  
Kathy Jones, Program Technician  
AECAB, PAS

Certified Mail Receipt Number: 7009 1680 0000 7673 7906