



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

AUG - 9 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

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

Dear Mr. Ashlock:

I have enclosed an executed copy of an Administrative Consent Order ("ACO") between Dimond Center, LLC, and the U.S. Environmental Protection Agency. The ACO resolves the December 11, 2015, Finding of Violation that was issued to Dimond Center.

If you have any questions regarding the ACO, 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,

A handwritten signature in cursive script that reads "Brian Dickens".

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

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) EPA-5-14-113(a)-COE-02
)
Dimond Center LLC) **Proceeding Under Section 113(a)(3) of the Clean**
Anchorage, Alaska) **Air Act, 42 U.S.C. § 113(a)(3)**
)
_____)

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Dimond Center LLC, under Section 113(a)(3) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3).

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 Subchapter VI of the CAA to any person who has violated or is violating any requirement of Subchapter VI. The Administrator delegated this authority to the Director of the Air and Radiation Division, Region 5.

3. Pursuant to Subchapter VI of the CAA, 42 U.S.C. §§ 7671 -7671(q), EPA promulgated the Production and Consumption Controls for Stratospheric Ozone Protection at 40 C.F.R. Part 82, Subpart A, 40 C.F.R. §§ 82.1 through 24 (hereinafter, “the Production and Consumption Controls”). These regulations establish production and consumption allowances for class I and class II controlled substances.

4. Pursuant to 40 C.F.R. § 82.15(b), effective January 21, 2003, no person may import class II controlled substances for which EPA has apportioned baseline production and

consumption allowances. 40 C.F.R. § 82.19 includes a table that lists all persons that are apportioned baseline consumption allowances for class II controlled substances.

5. Pursuant to 40 C.F.R. § 82.62, “class II substances” are defined as any substance designated as class II in 40 C.F.R. Part 82, Subpart A, Appendix B.

6. Pursuant to 40 C.F.R. Part 82, Subpart A, Appendix B, Hydrochlorofluorocarbon-22 (HCFC-22), which is also known by the common name R-22, is a designated class II substance.

7. Pursuant to 40 C.F.R. § 82.62, the term “person” is defined in part as “... any individual or legal entity, including an individual, corporation, partnership.”

8. Pursuant to Section 601 of the CAA, 42 U.S.C. § 7661d, the term “import” is defined in part, as “... bring into, to land on or introduce into, or attempt to land on any place subject to the jurisdiction of the United States.”

9. Pursuant to 40 C.F.R. § 82.3 the term “importer” is defined in part as, “... a person who imports a controlled substance or a controlled product into the United States, and the importer of record (listed on U.S. Customs form for imported controlled substances).”

Findings

10. Dimond Center LLC is a “person” as defined at 40 C.F.R. § 82.3.

11. Dimond Center LLC owns and operates industrial refrigeration equipment at a shopping mall at 800 East Dimond Boulevard, Anchorage, Alaska.

12. 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 2,268 kilograms of R-22.

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

14. On or about October 17, 2012, U.S. Customs and Border Protection seized the shipment of R-22.

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

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

17. 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.

18. Dimond Center LLC violated the Production and Consumption Controls at 40 C.F.R. § 82.15(b)(1).

19. On December 11, 2015, EPA issued a Finding of Violation (FOV) alleging the violation of the Production and Consumption Controls by attempting to import 2,268 kilograms of R-22 into the United States.

20. 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 Order.

Compliance Program

21. By the effective date of this Order, Dimond Center LLC must achieve, demonstrate and maintain compliance with the Production and Consumption Controls.

22. Dimond Center LLC must not import or attempt to import 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 Dimond Center LLC for that control period.

23. If Dimond Center LLC obtains an allowance to import a controlled substance during the effective period of this Order, it must notify Region 5 prior to importing a controlled substance at the following address:

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

General Provisions

24. This Order does not affect Dimond Center LLC's responsibility to comply with other federal, state and local laws.

25. This Order does not restrict EPA's authority to enforce Section 605 of the CAA or any other section of the CAA.

26. Nothing in this Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the CAA, 42 U.S.C. § 7413, for Dimond Center LLC's violation of the Production and Consumption Controls.

27. Failure to comply with this Order may subject Dimond Center LLC to penalties of up to \$37,500 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

28. The terms of this Order are binding on Dimond Center LLC, its assignees and successors. Dimond Center LLC must give notice of this Order to any successors in interest

prior to transferring ownership, during the effective period of this Order, and must simultaneously verify to EPA, at the above address, that it has given the notice.

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

30. Dimond Center LLC agrees to the terms of this Order.

31. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate two years from the effective date, provided that Dimond has complied with all terms of the Order throughout its duration.

7/13/16
Date



Hugh Ashlock
Member
Dimond Center LLC

8/3/16
Date



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

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent an original of Administrative Consent Order Number EPA-5-16-113(a)-COE-02 by Certified Mail, Return Receipt Requested, to:

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

I also certify that I sent a copy of the Administrative Consent Order by First-Class Mail to:

Edward Kowalski
Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code: OCE-184
Seattle, WA 98101

on the 17 day of August 2016

Loretta Shaffer
Loretta Shaffer, Program Technician
AECAB, PAS

Certified Mail Receipt Number: 7014 2870 0001 9580 4398