



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 25 2010

REPLY TO THE ATTENTION OF:

(AE-17J)

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

Mr. Jeff Visher  
Painesville Salvage, Inc.  
d/b/a Painesville Recycling  
83 Stage Avenue  
Painesville, Ohio 44077

Re: Painesville Recycling, Painesville, Ohio

Dear Mr. Visher,

Enclosed is your copy of the signed Administrative Consent Order (ACO) which resolves the Finding of Violation issued to Painesville Recycling (Painesville) on August 12, 2009.

The terms of this Order 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 Order may subject All Scrap 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. Erik Olson, Associate Regional Counsel, at (312) 886-6829, or Ms. Shilpa Patel, of my staff, at (312) 886-0120.

Sincerely,

A handwritten signature in cursive script that reads "William L. MacDowell".

William MacDowell, Chief  
Air Enforcement and Compliance Assurance Section (OH/MN)

Enclosures: ACO

cc: Shilpa Patel (AE-17J)  
Erik Olson (C-14J)

**standard bcc's:** official file copy w/ attachment(s)  
originating organization reading file w/attachment(s)

**other cc's:** Erik Olson, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>EPA-5-10-113(a)-OH-01</b>
	)	
<b>Painesville Salvage, Inc.</b>	)	
<b>d/b/a Painesville Recycling</b>	)	<b>Proceeding Under Sections</b>
<b>83 Stage Avenue</b>	)	<b>113(a)(3) and 114(a)(1)</b>
	)	<b>of the Clean Air Act</b>
<b>Painesville, Ohio</b>	)	<b>42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)</b>
	)	
	)	

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**Administrative Consent Order**

1. The Director of the Air and Radiation Division (Director), U.S. Environmental Protection Agency, Region 5 (EPA), is entering into this Administrative Consent Order (Order) with Painesville, Ohio under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(3), 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. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated his order authority to the Director pursuant to EPA Region 5 Delegation 7-6-A.

3. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the

Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region 5, has delegated his information gathering authority to the Director pursuant to EPA Region 5 Delegation 7-8.

4. Title VI of the Act, 42 U.S.C. § 7671, *et seq.*, provides for the protection of stratospheric ozone. 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 refrigerants containing chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners. These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. 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 conditioners (MVACs) 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. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly evacuate and recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

7. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define motor vehicle air conditioners (MVACs) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

## **II. Findings**

8. Painesville owns and operates a scrap metal recycling facility at 83 Stage Avenue, Painesville, Ohio. Painesville is a corporation organized and doing business in Ohio. Painesville is a person as defined by 40 C.F.R. § 82.152.

9. Painesville is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

10. On April 14, 2009, EPA conducted an inspection of Painesville.

11. On May 5, 2009, EPA sent Painesville a request for information pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a). EPA requested information related to Painesville's compliance with the safe disposal requirements of 40 C.F.R. § 82.156.

12. On May 22, 2008, Painesville responded to EPA's request for information.

13. Painesville accepted small appliances without recovering refrigerant.

Painesville did not obtain verification statements that met the requirements of 40 C.F.R. 82.156(f) for these small appliances.

14. On August 12, 2009, EPA sent Painesville a Finding of Violation (FOV). EPA informed Painesville in the FOV that it was not in compliance with 40 C.F.R. § 82.156(f) because it did not recover refrigerant and did not obtain proper verification statements. EPA offered Painesville an opportunity to confer with EPA on the alleged violations, and on August 15, 2008 representatives of Painesville and EPA discussed the FOV and alleged violations via teleconference.

15. On September 30, 2009, representatives of Painesville and EPA discussed the proposed Order and agreed to the compliance program identified in Section III of this Order.

### **III. Compliance Program and Agreement**

16. Painesville must comply with 40 C.F.R. Part 82. Additionally, Painesville shall take the following actions by the dates specified and maintain compliance with paragraphs 18 through 23, below, for two years after the effective date of this Order for any small appliance or MVAC that it receives at its facility.

17. By November 15, 2009, Painesville shall not accept small appliances or MVACs with cut or dismantled refrigerant lines unless its supplier can provide the certification identified in paragraph 19 below.

18. By November 15, 2009, Painesville shall notify its suppliers in writing that it will not accept small appliances or MVACs with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly evacuated prior to cutting

or dismantling the refrigerant lines. Painesville will have its suppliers use the verification statement included as Attachment 1 to this Order if they claim that refrigerant was previously evacuated.

19. By November 15, 2009, Painesville shall notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap. Painesville may satisfy the notice requirements of paragraphs 19 and 20 with a sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

20. By November 30, 2009, Painesville shall purchase and use equipment to recover refrigerant from small appliances and MVACs.

21. Painesville shall have the refrigerant recovered by a properly trained individual. If that individual is an employee of Painesville, then Painesville will ensure that the individual is properly trained to use the equipment identified in paragraph 21.

22. By November 30, 2009, Painesville shall use the small appliance log included as Attachment 2. Painesville will retain copies of receipts for all refrigerant it collects and sends to another company for reclamation. Painesville will also document the number of small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

23. By December 30, 2009, Painesville shall provide EPA with proof of its compliance with the notice requirements of paragraphs 19 and 20. By December 30, 2009, Painesville must also provide EPA with proof that it purchased the equipment required by paragraph 21 and has an individual trained in recovering refrigerant as required by paragraph 22.

24. By June 31, 2010, December 30, 2010, June 31, 2011, and December 30, 2011, Painesville shall submit to EPA a copy of its small appliance log, the information required by paragraph 23 and any verification statements used pursuant to paragraph 19 above.

25. Painesville shall send all reports required by this Order to:

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

#### **IV. General Provisions**

26. Painesville agrees to the terms of this Order.

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

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

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 Painesville 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.

31. Painesville 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 Painesville 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.

32. 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.

33. The terms of this Order are binding on Painesville, its assignees, and successors. Painesville 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 under this Order in an administrative, civil, judicial, or criminal action.

35. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that Painesville has complied with all terms of the Order throughout its duration.

36. 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.

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

38. This Order constitutes the entire agreement between the parties.

AGREED AS STATED ABOVE:

PAINESVILLE RECYCLING

By: John Faustini

Date: 11-24-09

Name: JOHN FAUSTINI

Title: OWNER / PRES

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cheryl L. Newton

Date: 1/25/10

Cheryl L. Newton  
Director  
Air and Radiation Division

**CERTIFICATE OF MAILING**

I, Loretta Shaffer, certify that I sent the Administrative Order, EPA

Order No. EPA-5-09-113(a)-OH-1, by Certified Mail, Return Receipt Requested, to:

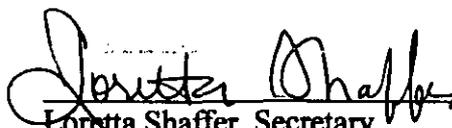
Jeff Visher  
Painesville Recycling  
83 Stage Avenue  
Painesville, Ohio 44077

I also certify that I sent a copy of the Administrative Consent Order, EPA Order  
No. EPA-5-09-113(a)-OH-1, by First Class Mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, OH 43216-1049

Dennis Bush, Supervisor  
Northeast District Office  
Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087

on the 26 day of Jan 2010.

  
\_\_\_\_\_  
Loretta Shaffer, Secretary  
AECAB/AECAS/MN-OH

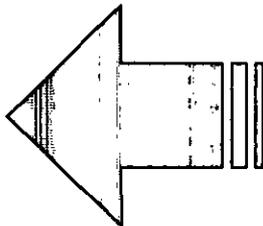
Certified Mail Receipt Number: 7001 0320 0005 8907 8022



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Form Type = "Enf Received"  
CODE128 type barcode



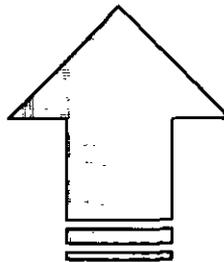
Landscape Feed

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This is a Patch T type separator sheet.



Form Type = "Enf Received"  
CODE128 type barcode



Portrait Feed  
**New Form Follows...**

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

DEC 16 2010

REPLY TO THE ATTENTION OF:  
AE-17J

Michael F. Baker  
The Minnesota Chemical Company  
2285 Hampden Avenue  
St. Paul, Minnesota 55114-1294

RE: Applicability Determination for 40 C.F.R. Part 63 Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities – applicability of secondary carbon adsorption requirements for resold equipment

Dear Mr. Baker,

The U.S. Environmental Protection Agency has reviewed your letter dated April 28, 2009. In your letter, you ask for guidance from EPA concerning the applicability of the secondary carbon adsorption requirements for dry cleaning equipment constructed after December 21, 2005 at a non-residential area source under 40 C.F.R. §63.322(o)(2), which is part of 40 C.F.R. Part 63 Subpart M – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (Dry Cleaner NESHAP). Specifically, you ask whether dry cleaning equipment that was initially installed prior to December 21, 2005 but was removed from its original location, sold to a new owner, and relocated to a new location subsequent to December 21, 2005 is subject to the area source, non-residential carbon adsorption requirements at 40 C.F.R. §63.322(o)(2). In summary, we have determined that reselling *and* relocating dry cleaning equipment constitutes installation. Therefore dry cleaning equipment that is resold *and* relocated is subject to the secondary carbon adsorption requirements at 40 C.F.R. §63.322(o)(2). However, we intend to maintain our existing position that relocation of dry cleaning equipment *by its owner* does not constitute installation under 40 C.F.R. §63.322(o)(2) and the Dry Cleaner NESHAP. This position was set forth in a March 5, 1994 memo between John B. Rasnic, Director, Stationary Source Compliance Division, OAQPS to William A. Spratlin, Director, Air and Toxics Division, Region 7 (Rasnic Memo) and upheld in a December 14, 2006 letter from EPA Region 1 to United States Surgical specifically regarding 40 C.F.R. §63.322(o)(2).

The Dry Cleaner NESHAP was originally promulgated on September 22, 1993. The original rule required that all dry cleaning equipment installed after September 22, 1993 be equipped with a with a refrigerated condenser. Since the time of original promulgation, there have been numerous revisions to the rule. The most relevant revision was promulgated on July 27, 2006 after a finding that both a residual risk to human health and advances in practices, processes, and control technologies warranted more stringent requirements than the original rule in accordance with Section 112 of the Clean

promulgation, there have been numerous revisions to the rule. The most relevant revisions were promulgated on July 27, 2006, and included a requirement that all dry cleaning equipment “installed” after December 21, 2005, be equipped with a refrigerated condenser *and* a non-vented carbon adsorption system. This requirement is located at 40 C.F.R. § 63.322(o)(2). The 2006 rule left unchanged the definitions of “construction” and “reconstruction” in 40 C.F.R. § 63.321.

In your April 28, 2009, letter, you state that you are in the business of selling and repairing dry cleaning equipment. You ask, as a general matter, whether equipment originally installed prior to December 21, 2005, that has been removed from its place of original installation must comply with the carbon adsorption requirements of 40 C.F.R. § 63.322(o)(2) if it is resold and reinstalled in a new location after December 21, 2005. (You do not mention whether such machines would have been altered or modified before being re-installed, or whether their washer or dryer or other components would have been replaced.) After reviewing your request, we would consider that dry cleaning equipment that has been removed from its place of original installation would need to comply with the carbon adsorption requirements of 40 C.F.R. § 63.322(o)(2) upon reinstallation in a new location if it is sold to a new owner/operator. This is supported by the following points:

1. The term “construction” is defined under the Dry Cleaner NESHAP as “fabrication (onsite), erection, or installation of a dry cleaning system subject to [the Dry Cleaner NESHAP].” At the outset, this language suggests that *any* installation of dry cleaning equipment constitutes construction regardless of whether that equipment was previously installed elsewhere, unless there is some reason that a particular situation justifies an alternative reading.
2. The term “reconstruction” is defined as “replacement of a washer, dryer, or reclaimer; or replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.” Similarly, this language suggests that *any* situation in which a major component of a machine is being replaced, reconstruction is occurring, unless otherwise justified.
3. The 1994 Rasnic Memo based its finding that dry cleaning equipment may maintain “existing” status when that equipment is *relocated by its owner* on the following rationale:

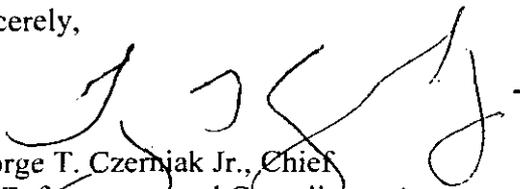
“The economic decisions made in connection with the promulgation of the [Dry Cleaner NESHAP] did not provide for costs as high as those that would result from including relocated facilities within the definition of ‘new’ facilities subject to the regulation.”

This rationale applied to the situation addressed in the Conroy Memo, where the owner was re-installing an existing operating machine in its original location

without having altered it or replaced any of its components. But it would not apply in the contexts of potential *purchasers* of previously installed dry cleaning machines that are not currently in operation and would be either: a) installed in a location that would contain dry cleaning equipment for the first time, or b) replacing dry cleaning equipment in a location with existing equipment. Both of those scenarios are essentially identical to situations in which a would-be operator is opening a new dry cleaning facility or a current operator is obtaining equipment he or she is not currently operating to replace equipment that has met the end of its useful life. A review of preamble information regarding the Dry Cleaner NESHAP shows that substantial economic analyses regarding the impacts of the added costs associated with pollution control technology to purchased equipment were conducted prior to the proposal and the promulgation of the Dry Cleaner NESHAP and its revisions (See 56 FR 64832, December 8, 1991; 58 FR 49354, September 22, 1993; 70 FR 75884, December 21, 2005; and 71 FR 42724, July 27, 2006). Allowing resold and relocated equipment to be installed by new purchasers could create an incentive to avoid the very compliance costs and emissions reductions that EPA considered in its rulemakings and upon which the promulgated standards relied.

In summary, we would consider that dry cleaning equipment that is resold and relocated to be subject to the control requirements of 40 C.F.R. 63.322(o)(2). Regarding relocated equipment that does not change ownership, we refer you to the findings of the 1994 Rasnic Memo and the 2006 Conroy Memo. Because this letter discusses new guidance, we have coordinated this response with EPA's Office of Air Quality Planning and Standards, EPA's Office of General Counsel, and EPA's Office of Enforcement and Compliance Assurance. If you have any questions on this, please contact Nathan A. Frank, P.E. of my staff at (312) 886-3850.

Sincerely,



George T. Czerniak Jr., Chief  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division

cc: Nathan Frank, Region 5  
Scott Throwe, OECA/OC  
Mike Thrift, OGC  
Kim Teal, OAQPS  
Robin Dunkins, OAQPS  
Chebryll Edwards, OAQPS  
Warren Johnson, OAQPS  
Susan Lancey, Region 1  
Jeff Connell, MPCA  
Kim Grosenheider, MPCA