



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 03 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rhonda Kienbaum
Auto and Scrap Recyclers
3800 West Mill Road
Milwaukee, Wisconsin 53209

Re: Auto and Scrap Recyclers, Milwaukee, Wisconsin

Dear Ms. Kienbaum,

Enclosed is the Administrative Consent Order (ACO) which resolves the Finding of Violation issued to Auto and Scrap Recyclers on December 3, 2008. Please retain this copy for your records.

The terms of this Order became effective on the date of signature by the Director, and are binding until March 31, 2011. Failure to comply with this Order may subject Auto and 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. Rich Clarizio, Associate Regional Counsel, at (312) 886-0559, or Ms. Natalie Topinka, of my staff, at (312) 886-3853.

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-09-113(a)-WI-03
)	
Auto and Scrap Recyclers)	Proceeding Under Section 113(a)(3)
3800 West Mill Road)	of the Clean Air Act
Milwaukee, Wisconsin 53209)	42 U.S.C. § 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”), is entering into this Order with Auto and Scrap Recyclers, (“Auto and Scrap”), 3800 West Mill Road, Milwaukee, Wisconsin under Section 113(a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(3).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), provides the Administrator of EPA with the authority to issue an Order requiring compliance with Title VI of the Clean Air Act. The Administrator of EPA has delegated her 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 authority to the Director pursuant to EPA Region 5 Delegation 7-6-A.

3. Section 113(a)(3)(B)(4) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B)(4), presents the requirements for issuance of this Order. EPA must provide the recipient of an Order with an opportunity to confer 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.

4. Title VI of the Clean Air 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 Clean Air, 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 such 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.

5. 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.

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 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 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. Auto and Scrap owns and operates a scrap metal recycling facility at 3800 West Mill Road, Milwaukee, Wisconsin, 53209. It received small appliances at this facility from a variety of suppliers, including individuals who collected the small appliances from the street (i.e., peddlers). Auto and Scrap is a corporation organized and doing business in Wisconsin. Auto and Scrap is a person as defined by 40 C.F.R. § 82.152.

8. On July 16, 2008, EPA conducted an inspection of Auto and Scrap.

9. On October 7, 2008, EPA sent Auto and Scrap a request for information pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a). EPA requested information related to its compliance with the safe disposal requirements of 40 C.F.R. § 82.156.

10. On October 16, 2008, Auto and Scrap sent in a response to EPA's request for information. It included information related to its size and finances.

11. Auto and Scrap accepted small appliances without recovering refrigerant. Auto and Scrap did not obtain verification statements that met the requirements of 40 C.F.R. § 82.156(f) for these small appliances. Auto and Scrap received small appliances from a variety of suppliers, including individuals who collected the small appliances from the street (i.e., peddlers). Auto and Scrap 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.

12. On December 3, 2008, EPA sent Auto and Scrap a Finding of Violation ("FOV"). EPA informed Auto and Scrap 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 Auto and Scrap an opportunity to confer with EPA on the alleged violations.

13. Auto and Scrap requested an opportunity to confer with EPA via telephone. On January 13 and 28, 2009, representatives of Auto and Scrap and EPA discussed via telephone the FOV; the alleged violations and potential compliance options. Auto and Scrap and EPA agreed to the compliance program identified in Section III of this Order.

III. Compliance Program and Agreement

14. Auto and Scrap agrees to comply with 40 C.F.R. Part 82. Additionally, Auto and Scrap agrees to implement the following actions from the effective date of this Order until March 31, 2011, for any small appliance that it receives at its facility. Auto

and Scrap agrees that it will recover refrigerant pursuant to paragraphs 17 to 19 or verify recovery pursuant to paragraphs 15 and 16.

15. Auto and Scrap agrees that it will no longer accept small appliances with cut or dismantled refrigerant lines unless it implements its refrigerant verification program required by paragraph 16.

16. Auto and Scrap agrees to notify its suppliers in writing that it will not accept small appliances 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. Auto and Scrap will have its suppliers use the verification statement included as Attachment 1 if they claim that refrigerant was previously evacuated.

17. Auto and Scrap agrees to notify its suppliers in writing that it will provide refrigerant recovery services. Auto and Scrap may satisfy the notice requirements of paragraphs 16 and 17 with a sign that is prominently displayed at its weigh station during the period of time that this Order is effective.

18. Auto and Scrap agrees that it will purchase and use equipment to recover refrigerant from small appliances.

19. Auto and Scrap agrees that it will have the refrigerant recovered by a properly trained and certified individual. If that individual is an employee of Auto and Scrap, then Auto and Scrap will ensure that the individual is properly trained to use the equipment identified in paragraph 18 and has the required certifications.

20. Auto and Scrap agrees to use the small appliance log included as Attachment 2. Auto and Scrap will retain copies of receipts for all refrigerant it collects

and sends to another company for reclamation. Auto and Scrap will also document the number of small appliances it rejects and the reason for rejecting the item(s).

21. Within 10 days of the effective date of this Order Auto and Scrap agrees to provide EPA with proof of its compliance with the notice requirements of paragraphs 16 and 17. By that date Auto and Scrap agrees that it will also provide EPA with proof that it purchased the equipment required by paragraph 18 and has an individual trained and certified in recovering refrigerant as required by paragraph 19.

22. By September 30, 2009, March 31, 2010, September 30, 2010, and March 31, 2011, Auto and Scrap agrees to submit to EPA a copy of its small appliance log, the information required by paragraph 20 and any verification statements used pursuant to paragraph 16 above.

IV. General Provisions

23. Auto and Scrap agrees that it will not contest the authority of EPA and it to enter into this agreement. It agrees to waive any further opportunity to confer or have a hearing.

24. This Order does not restrict EPA's authority to enforce previous or future violations of the CAA.

25. Failure to comply with this Order may subject Auto and Scrap to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

26. The terms of this Order are binding on Auto and Scrap, its assignees, and successors. Auto and Scrap 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.

27. Auto and Scrap 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 Auto and Scrap 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. EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

30. This Order is effective on the date of receipt of this Order by Auto and Scrap with the signature of the Director. This Order will terminate on March 31, 2011 provided that Auto and Scrap has complied with all terms of the Order throughout its duration.

31. 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

- 32. Auto and Scrap certifies that it is complying fully with 40 C.F.R. Part 82.
- 33. 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.
- 34. Each Party agrees to pay its own costs and attorneys' fees in this action.
- 35. This Order constitutes the entire agreement between the Parties.

AGREED AS STATED ABOVE:

AUTO AND SCRAP RECYCLERS

By: Rhonda Kienbaum Date: 7-27-09
Name: Rhonda Kienbaum
Title: Secretary

AGREED AND SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

8/3/09
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division

Clean Air Act Verification Statement

Directions:

Complete statements 1 & 2.

Complete, sign, and date Seller Information section.

1. On today's date ____ / ____ / ____, I sold the following materials to Auto & Scrap Recyclers. **(please check all that apply):**

- () refrigerator(s)
- () air conditioning unit(s)
- () automobile(s) containing air conditioning units
- () other _____

2. I certify that all refrigerants, as defined in section 608 of the Clean Air Act and 40 CFR 82, within these materials that had not leaked previously:

- () have been recovered from the materials prior to my delivery to Auto & Scrap Recyclers, by a certified technician in accordance with procedures described in 40 CFR §82.156 (g) or (h) and the provisions of section 285.59, Wisconsin Statutes, and Chapter NR 488, Wisconsin Administrative Code:

on Date: _____

by: Name: _____

Address: _____

Telephone Number: _____

Registered with WDNR for Refrigerant Recovery from Salvaged or Dismantled Refrigeration Equipment.
WDNR Registration Number _____

Not registered with WDNR

Buyer Information	Seller Information <i>(Please Print)</i>
Auto & Scrap Recyclers 3800 West Mill Road Milwaukee, WI (414) 358-3540	Date: _____ NAME: _____ COMPANY: _____ STREET ADDRESS: _____ CITY/STATE/ZIP: _____ TELEPHONE NUMBER: _____ SIGNATURE: _____
Accepted by: _____ Auto & Scrap Recyclers	

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-WI- 03, by Certified Mail, Return Receipt Requested, to:

Rhonda Kienbaum
Auto and Scrap Recyclers
3800 West Mill Road
Milwaukee, Wisconsin 53209

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-WI-03, by First Class Mail to:

Daniel Schramm, Air Management Supervisor
Wisconsin Department of Natural Resources
Southeast Region
2300 North Dr Martin Luther King JR Dr
Milwaukee, Wisconsin 53212

Lance Green
Wisconsin Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, Wisconsin 53707-7921

on the 4th day of August 2009.

Betty Williams
Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

Certified Mail Receipt Number 70010320000589097414