

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
ENVIRO-SAFE REFRIGERANTS, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Defendant Enviro-Safe Refrigerants, Inc. (“Enviro-Safe”) pursuant to Section 113(b) of the Clean Air Act (“CAA” or the “Act”), as amended, 42 U.S.C. § 7413(b), to obtain injunctive relief and civil penalties for violations of CAA Section 612, 42 U.S.C. § 7671k, and the implementing regulations at 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184 (Significant New Alternatives Policy Program). The violations alleged in the Complaint occurred and continue to occur at Enviro-Safe’s refrigerant formulating plant and/or office and sales center located in Pekin, Illinois.

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over the subject matter and the parties to this action pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a).

3. Venue is proper in this District pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395, because Defendant resides within this District and the alleged violations that constitute the basis of this Complaint occurred and continue to occur within this District.

4. As required by CAA Section 113(b), 42 U.S.C. § 7413(b), the United States has provided notice of the commencement of this action to the State of Illinois.

AUTHORITY

5. The United States has authority to bring this action on behalf of the Administrator of EPA under CAA Section 305, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

DEFENDANT

6. Enviro-Safe is a corporation registered in the State of Illinois, with its headquarters in Pekin, Illinois. Enviro-Safe was incorporated on December 10, 1996.

7. Defendant owns and operates a refrigerant formulating plant, located at 100 Caroline Street in Pekin, Illinois, and an office and sales center, located at 400 Margaret Street in Pekin, Illinois.

8. Defendant constitutes a “person” within the meaning of CAA Section 302(e), 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.172.

STATUTORY AND REGULATORY BACKGROUND

9. The primary purpose of the CAA is to protect and enhance the quality of the Nation's air resources, so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

10. Subchapter VI of the Act, §§ 601-618, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection"), implements the Montreal Protocol on Substances that Deplete the Ozone Layer. *See* 59 Fed. Reg. 13044-45 (March 18, 1994). It mandates the elimination or control of substances that have emissions known or suspected to have significant adverse effects on the ozone layer. *Id.* The ozone layer reduces the amount of harmful ultraviolet radiation that reaches Earth's surface. 59 Fed. Reg. 13044 (March 18, 1994).

11. In accordance with the Montreal Protocol's goals, Congress established lists of class I and class II ozone-depleting substances. 42 U.S.C. § 7671. These lists mostly consist of chlorofluorocarbons ("CFCs") and hydrochlorofluorocarbons ("HCFCs"), including CFC-115 and HCFC-22. *Id.* Pursuant to CAA Section 602(c), 42 U.S.C. § 7671(c), EPA may add any substance harmful to the ozone layer to the appropriate list when necessary.

12. CAA Section 612(a), 42 U.S.C. § 7671k(a), requires that chemicals, products, or manufacturing processes that reduce overall risks to humans and the environment replace class I and class II substances to the maximum extent practicable.

13. Under CAA Section 612(c), 42 U.S.C. § 7671k(c), EPA was required to promulgate regulations making unlawful the replacement of any class I or class II substance with a substitute that may present adverse effects to human health or the environment.

SNAP REGULATIONS

14. The regulatory program that establishes substitutes for ozone-depleting substances is known as the Significant New Alternatives Policy (“SNAP”) program. 40 C.F.R. Part 82, Subpart G, §§ 82.170-82.184. Under the SNAP program, promulgated on March 18, 1994, EPA evaluates, identifies, and promotes substitutes for class I and class II substances that present lower overall risk to human health and the environment than the listed ozone-depleting substances. 40 C.F.R. § 82.170(a).

15. With CAA Section 612(e), 42 U.S.C. § 7671k(e), Congress directed EPA to require any person who produces a substitute for a class I substance to notify EPA of its intent to distribute the substance in interstate commerce. Notification, including a health and safety report, must occur at least 90 days before the substitute’s introduction into interstate commerce. *Id.* Pursuant to the Act’s purpose of phasing out class I substances without creating new environmental problems, and authorized under CAA Sections 114, 301, and 612(c), 42 U.S.C. §§ 7414, 7601, and 7671k(c), this provision has been interpreted to encompass class II reporting requirements as well. 59 Fed. Reg. 13051 (Mar. 18, 1994).

16. In accordance with CAA Section 612(e), 42 U.S.C. § 7671k(e), EPA promulgated regulations requiring that a producer of a new substitute submit a notice of intent to introduce the substitute into interstate commerce (“SNAP Information Notice”) at least 90 days before its introduction. 40 C.F.R. § 82.176(a). The SNAP regulations likewise prohibit any person from introducing a new substitute into interstate commerce before the expiration of the 90-day notice period. 40 C.F.R. § 82.174(a). 59 Fed. Reg. 13051 (Mar. 18, 1994).

17. The SNAP notification requirement applies to nine principal industrial sectors (Major Industrial Use Sectors), including the refrigeration and air conditioning sector. 40 C.F.R. § 82.172.

18. The SNAP Information Notice must include, *inter alia*, physical and chemical information, substitute applications, process description, ozone depletion potential, global warming impacts, toxicity data, flammability data, and exposure data. 40 C.F.R. § 82.178(a).

19. EPA reviews the SNAP Information Notice to determine the proposed substitute's acceptability as a class I or class II replacement. 42 U.S.C. § 7671k(e); 40 C.F.R. § 82.180(a)(7). This review includes evaluating, *inter alia*, the substance's atmospheric effects, occupational risks, consumer risks, and flammability. *Id.* When reviewing substitutes, EPA will categorize them as acceptable, acceptable subject to use conditions, acceptable subject to narrowed use limits, unacceptable, or pending. 40 C.F.R. § 82.180(a)(7)

20. A "substitute" includes any chemical or product intended for use as a replacement for a class I or class II substance. 40 C.F.R. § 82.172. A chemical or product can be a substitute whether it is existing or new. *Id.*

21. A "producer" is any person who manufactures, formulates, or otherwise creates a substitute in its final form for distribution or use in interstate commerce. 40 C.F.R. § 82.172. A "formulator" is engaged in the preparation of a substitute for its commercial distribution after chemical manufacture of the substitute or its components. *Id.* If a product is repackaged solely to introduce it into interstate commerce as a class I or class II substitute, the introducer must notify EPA. 59 Fed. Reg.13053 (Mar. 18, 1994)

ENFORCEMENT PROVISIONS OF THE CAA

22. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes EPA to commence a civil action for injunctive relief and/or for civil penalties against any person who has violated or is in violation of any requirement or prohibition of Subchapter VI or any rules promulgated thereunder.

23. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes civil penalties of up to \$25,000 per day for each violation of the CAA. The Debt Collection Improvement Act, 31 U.S.C. § 3701 *et seq.*, requires EPA to periodically adjust its civil penalties for inflation. On December 31, 1996, February 13, 2004, December 11, 2008, and November 6, 2013, EPA adopted and revised regulations entitled “Adjustment of Civil Monetary Penalties for Inflation,” 40 C.F.R. Part 19, to upwardly adjust the maximum civil penalty under the CAA. For each violation that occurs between January 31, 1997 and March 15, 2004, inclusive, civil penalties of up to \$27,500 per day may be assessed; for each violation that occurs between March 16, 2004 and January 12, 2009, inclusive, penalties of up to \$32,500 per day may be assessed; and for each violation that occurs on and after January 13, 2009, penalties of up to \$37,500 per day may be assessed. 61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008); 78 Fed. Reg. 66643 (Nov. 6, 2013).

GENERAL ALLEGATIONS

24. R-22, also known as HCFC-22, is a non-flammable ozone-depleting substance that is used as a refrigerant primarily in residential air cooling systems. In accordance with the Montreal Protocol, R-22 has been listed as a class II substance under CAA Section 602(b), 42 U.S.C. § 7671a(b), and is being phased out of production.

25. R-502, is a blend of R-22 and CFC-115 (a class I substance). It is a non-flammable ozone-depleting substance that was primarily used as a refrigerant in commercial frozen food applications and refrigerated trailers. R-502 has been phased out of production and R-22 is currently used as a substitute for R-502.

26. Enviro-Safe produces, markets, and sells a line of hydrocarbon-based replacement refrigerants for use in residential and commercial air cooling systems

27. Enviro-Safe purchases various propane blends in bulk quantities. At its refrigerant formulating facility, Enviro-Safe adds a pine-scent to the blends, bottles them in various sized containers, and sometimes labels them before distribution. Among Enviro-Safe's products are Enviro-Safe 22a Refrigerant (also known as R-22a, ES-22a or Enviro-22a) and Enviro-Safe 502a Refrigerant (also known as R-502a, ES-502a or Enviro-502a).

28. Enviro-Safe 22a Refrigerant and Enviro-Safe 502a Refrigerant are flammable hydrocarbons used as refrigerants in cooling applications such as residential air conditioners and refrigerators.

29. Enviro-Safe 22a Refrigerant is a "substitute," as defined in 40 C.F.R. § 82.172, for R-22.

30. Enviro-Safe 502a Refrigerant is a "substitute," as defined in 40 C.F.R. § 82.172, for R-502.

31. Enviro-Safe is a "producer," as defined in 40 C.F.R. § 82.172, of Enviro-Safe 22a Refrigerant and Enviro-Safe 502a Refrigerant, in that it formulates those products in their final form for distribution or use in interstate commerce.

32. Neither Enviro-Safe 22a Refrigerant nor Enviro-Safe 502a Refrigerant has been submitted to EPA for review under the SNAP regulations (40 C.F.R. § 82.176(a)) by Enviro-Safe or any other producer.

COUNT 1

**Enviro-Safe 22a Refrigerant
Introduction of New Substitute into Interstate Commerce without Prior Notice
42 U.S.C. § 7671k; 40 C.F.R. § 82.174(a)**

33. The allegations contained in paragraphs 1 through 32, inclusive, are realleged and incorporated by reference as if fully stated herein.

34. Enviro-Safe sold Enviro-Safe 22a Refrigerant in interstate commerce as a substitute for R-22, an ozone-depleting substance listed under class II of Section 602(b) of the CAA, 42 U.S.C. § 7671a(b).

35. Given that Enviro-Safe has never submitted to EPA a SNAP Information Notice for Enviro-Safe 22a Refrigerant, all sales of Enviro-Safe 22a Refrigerant have occurred prior to 90 days after submission of the SNAP Information Notice required under 40 C.F.R. § 82.176(a).

36. On multiple occasions on multiple days through the present, Enviro-Safe violated 40 C.F.R. § 82.174(a) each day it introduced Enviro-Safe 22a Refrigerant into interstate commerce prior to the expiration of 90 days from submission of a SNAP Information Notice to EPA for Enviro-Safe 22a Refrigerant, contrary to the explicit prohibition in 40 C.F.R. § 82.174(a).

COUNT 2

**Enviro-Safe 502a Refrigerant
Introduction of New Substitute into Interstate Commerce without Prior Notice
42 U.S.C. § 7671k; 40 C.F.R. § 82.174(a)**

37. The allegations contained in paragraphs 1 through 32, inclusive, are realleged and incorporated by reference as if fully stated herein.

38. Enviro-Safe sold Enviro-Safe 502a Refrigerant in interstate commerce as a substitute for R-502, a blend of two ozone-depleting substance listed under class I and class II of CAA Section 602, 42 U.S.C. § 7671a.

39. Given that Enviro-Safe has never submitted to EPA a SNAP Information Notice for Enviro-Safe 502a Refrigerant, all sales of Enviro-Safe 502a Refrigerant have occurred prior to 90 days after submission of the SNAP Information Notice required under 40 C.F.R.

§ 82.176(a).

40. On multiple occasions on multiple days through the present, Enviro-Safe has violated 40 C.F.R. § 82.174(a) each day it introduced Enviro-Safe 502a Refrigerant in interstate commerce prior to the expiration of 90 days from submission of a SNAP Information Notice to EPA for Enviro-Safe 502a Refrigerant, contrary to the explicit prohibition in 40 C.F.R.

§ 82.174(a).

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 40 above, the United States requests that this Court:

1. Enjoin Enviro-Safe from the domestic sale of any form of propane-based refrigerant, including Enviro-Safe 22a Refrigerant and Enviro-Safe 502a Refrigerant, until it submits a SNAP Information Notice to EPA for each such product and it either receives EPA

approval for the sale of such product, in accordance with 40 C.F.R. § 82.180(b), or 90 days pass without action by EPA;

2. Assess a civil penalty against Enviro-Safe of up to \$37,500 per day for each violation occurring on and after January 13, 2009.

3. Award Plaintiff its costs of this action; and

4. Grant such other relief as the Court deems just and proper, including any appropriate relief in accordance with CAA Section 113(b), 42 U.S.C. § 7413(b).

Respectfully submitted,

/s John C. Cruden
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 United States of America

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 U.S. Department of Justice, Environmental Enforcement Section
 P.O. Box 7611
 Washington, DC 20044-7611 (202) 514-4432

DEFENDANTS
 Enviro-Safe Refrigerants, Inc.

County of Residence of First Listed Defendant Tazewell
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Gary Peters, Howard & Howard Attorneys PLLC
 450 West Fourth Street
 Royal Oak, MI 48067

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Clean Air Act, 42 U.S.C. Sec. 7413(b)

Brief description of cause:
Violation of Clean Air Act Sec. 612 and SNAP regulations

VII. REQUESTED IN COMPLAINT:

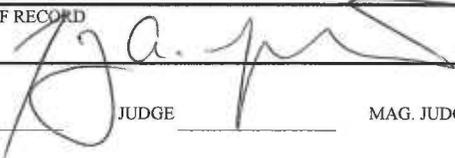
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 300,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 5-14-15 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____