

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 pursuant to 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 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 Kansas.

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. Defendant Northcutt is a corporation registered in the State of Kansas, with its headquarters in Wichita, Kansas. Defendant was incorporated on January 27, 1997.

7. Defendant owns and operates a refrigerant marketing, sales, and distribution facility located at 5055 N. Broadway Street, Wichita, Kansas.

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. 13,044, 13,044–45 (March 18, 1994). Subchapter VI 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. *Id.*

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 R-12, R-22, and R-502. *Id.* Pursuant to CAA Section 602(c), 42 U.S.C. § 7671a(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), Congress directed EPA 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 PROGRAM

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. 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.*

16. The SNAP regulations prohibit any person from introducing a new substitute into interstate commerce before expiration of 90 days after a notice of intent to introduce the substitute into interstate commerce (“SNAP Information Notice”) has been submitted to EPA. 40 C.F.R. § 82.174(a). Pursuant to the Act’s purpose of phasing out class I substances without creating new environmental problems, and as 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. 13,044, 13,051.

17. A SNAP Information Notice is required for proposed substitutes in nine principal industrial sectors (Major Industrial Use Sectors), including the refrigeration and air conditioning sector. 40 C.F.R. § 82.172.

18. A 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 evaluation of, *inter alia*, the substance's atmospheric effects, occupational risks, consumer risks, and flammability. 40 C.F.R. § 82.180(a)(7). When reviewing substitutes, EPA categorizes them as acceptable, acceptable subject to use conditions, acceptable subject to narrowed use limits, unacceptable, or pending. *Id.*

20. A SNAP Information Notice must specify the intended end-use of the proposed substitute. 40 C.F.R. § 82.178(a)(3).

ENFORCEMENT PROVISIONS OF THE CAA

21. 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.

22. 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 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 on and after January 13, 2009, penalties of up to \$37,500 per day may be assessed. 73 Fed. Reg. 75,340 (Dec. 11, 2008); 78 Fed. Reg. 66,643 (Nov. 6, 2013).

GENERAL ALLEGATIONS

23. R-12, also known as CFC-12, is a non-flammable ozone-depleting substance that

is used as a refrigerant primarily in motor vehicle air conditioning systems.

24. In accordance with the Montreal Protocol, R-12 has been listed as a class I substance under CAA Section 602(a), 42 U.S.C. § 7671a(a), and is being phased out of production.

25. 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.

26. 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.

27. R-502 is a blend of R-22 and CFC-115 and is itself considered 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.

28. R-502 has been phased out of production and R-22 is currently used as a substitute for R-502 until R-22 is completely phased out of production.

29. Northcutt markets, sells, and distributes a line of hydrocarbon-based replacement refrigerants for use in residential and commercial air cooling systems.

30. Among Northcutt's products are HC-12a Refrigerant, HC-22a Refrigerant, and HC-502a Refrigerant.

31. Northcutt markets, sells, and distributes each of the three products as replacements for ozone-depleting substances.

32. Beginning March 2010 to the present, Northcutt contracted with a third party to blend and bottle each of the three refrigerants per Northcutt's specifications.

33. On or around January 28, 2015, Northcutt stopped all sales of each of the three refrigerants in the United States. Northcutt continues to market, sell, and distribute each of the three products outside of the United States.

34. HC-12a Refrigerant, HC-22a Refrigerant, and HC-502a Refrigerant are flammable hydrocarbons used as refrigerants in cooling applications such as residential air conditioners and refrigerators.

35. HC-12a Refrigerant is a “substitute,” as defined in 40 C.F.R. § 82.172, for R-12.

36. HC-22a Refrigerant is a “substitute,” as defined in 40 C.F.R. § 82.172, for R-22.

37. HC-502a Refrigerant is a “substitute,” as defined in 40 C.F.R. § 82.172, for R-502.

38. By marketing, distributing, and selling HC-12a, HC-22a, and HC-502a in the United States from March 2010 to on or around January 28, 2015, Northcutt introduced each refrigerant into interstate commerce within the meaning of CAA Section 612(e), 42 U.S.C. § 7671k(e).

39. None of HC-12a Refrigerant, HC-22a Refrigerant, or HC-502a Refrigerant has been approved by EPA under the SNAP program, 40 C.F.R. Part 82, Subpart G, §§ 82.170–82.184, for the end uses advertised by Northcutt.

COUNT 1

HC-12a Refrigerant Introduction of New Substitute into Interstate Commerce without Prior Notice 42 U.S.C. § 7671k; 40 C.F.R. § 82.174(a)

40. The allegations contained in paragraphs 1 through 39, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

41. Northcutt sold HC-12a Refrigerant in interstate commerce as a substitute for R-

12, an ozone-depleting substance listed under class I of CAA Section 602(a), 42 U.S.C. § 7671a(a).

42. Given that EPA has never approved HC-12a Refrigerant under the SNAP Program for the end uses advertised by Northcutt, all domestic sales of HC-12a Refrigerant occurred prior to 90 days after submission of the SNAP Information Notice required under 40 C.F.R. § 82.176(a).

43. On multiple occasions on multiple days, Northcutt violated 40 C.F.R. § 82.174(a) each day it introduced HC-12a Refrigerant into interstate commerce prior to the expiration of 90 days from submission of a SNAP Information Notice to EPA for HC-12a Refrigerant for the advertised end uses.

44. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Northcutt is liable for civil penalties of up to \$37,500 for each day of violation.

COUNT 2

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

45. The allegations contained in paragraphs 1 through 39, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

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

47. Given that EPA has never received a SNAP Information Notice for HC-22a Refrigerant for the end uses advertised by Northcutt, all domestic sales of HC-22a Refrigerant occurred prior to 90 days after submission of the SNAP Information Notice required under 40

C.F.R. § 82.176(a).

48. On multiple occasions on multiple days, Northcutt violated 40 C.F.R. § 82.174(a) each day it introduced HC-22a Refrigerant in interstate commerce prior to the expiration of 90 days from submission of a SNAP Information Notice to EPA for HC-22a Refrigerant for the advertised end uses.

49. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Northcutt is liable for civil penalties of up to \$37,500 for each day of violation.

COUNT 3

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

50. The allegations contained in paragraphs 1 through 39, inclusive, are re-alleged and incorporated by reference as if fully stated herein.

51. Northcutt sold HC-502a Refrigerant in interstate commerce as a substitute for R-502, a class I blend of two ozone-depleting substances under CAA Section 602, 42 U.S.C. § 7671a.

52. Given that EPA has never received a SNAP Information Notice for HC-502a Refrigerant, all domestic sales of HC-502a Refrigerant occurred prior to 90 days after submission of the SNAP Information Notice required under 40 C.F.R. § 82.176(a).

53. On multiple occasions on multiple days, Northcutt violated 40 C.F.R. § 82.174(a) each day it introduced HC-502a Refrigerant in interstate commerce prior to the expiration of 90 days from submission of a SNAP Information Notice to EPA for HC-502a Refrigerant.

54. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Northcutt is liable for civil penalties of up to \$37,500 for each day of violation.

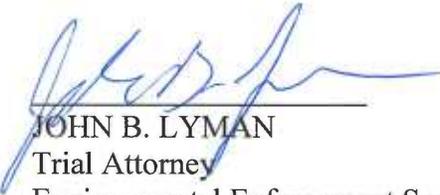
PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 54 above, the United States requests that this Court:

1. Assess a civil penalty against Northcutt of up to \$37,500 per day for each violation occurring on and after January 13, 2009;
2. Award Plaintiff its costs of this action; and
3. 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,

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