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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
PARKWAY IRON AND METAL CO., INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

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

NATURE OF ACTION

1. This civil action is brought against defendant Parkway Iron and Metal Co., Inc. (“Defendant” or “Parkway”), of 613-639 US Highway 46, Clifton, New Jersey 07013.

2. This civil action is brought pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

3. The United States seeks civil penalties and injunctive relief from Parkway for violations of Section 608 of the Clean Air Act, 42 U.S.C. § 7671g. These violations arise from illegal releases of refrigerants at Parkway's New Jersey scrap metal recycling facility.

4. The United States also seeks a civil penalty for Parkway's failure to accurately respond to an EPA request for information pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).

JURISDICTION AND VENUE

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

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395 and pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the facility at issue is located, and the alleged violations occurred, in this judicial district.

NOTICE

7. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the United States has notified the New Jersey Department of Environmental Protection that it will be commencing this action.

STATUTORY AND REGULATORY BACKGROUND

8. Sections 601 through 616 of the Clean Air Act, 42 U.S.C. §§ 7671 through 7671o, were enacted as a result of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

9. Under Section 608(c) of the Clean Air Act, 42 U.S.C. § 7671g(c), it is unlawful for any person, in the course of disposing of an appliance, to “knowingly vent or otherwise knowingly release” certain refrigerants listed in the statute as Class I or II ozone depleting substances, or any substitute for a listed Class I or II refrigerant.

10. An “appliance” is any device which contains and uses a Class I or II substance or its substitute as a refrigerant, and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer. 42 U.S.C. §§ 7671(1), 7671g(c)(2).

11. Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a), authorizes EPA to request information for the purpose of carrying out any provision of the Act, including determining whether any person is in violation of any standard of the Act.

12. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413, authorizes a “civil action for a permanent or temporary injunction, or to assess and recover a civil penalty” against any person who has violated, or is in violation of any requirement or prohibition of Section 114 or Section 608 (among other sections of the Clean Air Act), or “any rule, order, waiver, or permit promulgated, issued, or approved” under the Clean Air Act.

GENERAL ALLEGATIONS

13. Parkway is a corporation organized under the laws of the State of New Jersey.

14. Parkway is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), because Parkway is a New Jersey corporation.

15. Parkway owns and operates a metal recycling scrap yard at 613-619 Rt. 46E in Clifton, New Jersey (the “Facility”).

FIRST CLAIM FOR RELIEF (violation of 42 U.S.C. § 7671g)

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. At the Facility, Parkway shreds appliances and motor vehicles in order to separate out certain metals that it sells for reuse.

18. Parkway's process of shredding appliances and motor vehicles for reuse of their metal constitutes disposal within the meaning of Section 608(c) of the Clean Air Act, 42 U.S.C. § 7671g(c).

19. In April 2010, EPA inspectors visited Parkway's Facility and observed two refrigerators, two air conditioners, and one motor vehicle air conditioner with refrigerant tubing intact, indicating that the refrigerant had not been recovered from the appliances (the "2010 Appliances").

20. The 2010 Appliances all contained Class I or II refrigerants or their substitutes.

21. The 2010 Appliances were located in a final staging area where Parkway holds them prior to being shredded.

22. In the course of disposing of the 2010 Appliances, Parkway knowingly vented or otherwise knowingly released refrigerant from each appliance.

23. In June 2011, EPA inspectors returned to Parkway's Facility.

24. At the June 2011 inspection, EPA inspectors observed at least thirty eight refrigerators, freezers, and room air conditioners in a storage area (the "2011 Appliances").

25. EPA inspectors noted that all of the 2011 Appliances had refrigerant tubing intact.

26. Parkway's facility manager admitted to EPA inspectors that the 2011 Appliances had been set aside until any refrigerant contained in them could be recovered prior to disposal.

27. The 2011 Appliances all contained Class I or II refrigerants or their substitutes.

28. In March 2012, EPA inspectors again returned to the Facility.

29. At the March 2012 inspection, inspectors asked what had happened to the 2011

Appliances they had observed previously.

30. At the March 2012 inspection, Parkway's facility manager admitted to EPA inspectors that the 2011 Appliances had been shredded without first recovering the refrigerant contained therein.

31. In the course of disposing of the 2011 Appliances, Parkway knowingly vented or otherwise knowingly released refrigerant from each appliance.

32. At the March 2012 inspection, EPA inspectors also observed an intact motor vehicle air conditioner in a final staging area prior to shredding (the "2012 Appliance").

33. The 2012 Appliance contained R-12, a Class I ozone depleting substance.

34. In the course of disposing of the 2012 Appliance, Parkway knowingly vented or otherwise knowingly released refrigerant from the appliance.

35. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act, the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009. See 69 Fed. Reg. 7,121, 7,125 (Feb. 13, 2004), 73 Fed. Reg. 75,340, 75,345 (Dec. 11, 2008), and 78 Fed. Reg. 66,643, 66,647 (Nov. 6, 2013).

**SECOND CLAIM FOR RELIEF
(violation of 42 U.S.C. § 7414)**

36. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

37. On March 16, 2011 EPA sent Parkway an Information Request pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414 ("Information Request").

38. Parkway responded to the Information Request on May 18, 2011.

39. In the Information Request, EPA asked whether the Facility had received any

motor vehicles within the three year period prior to the Information Request, specifying that “the term ‘motor vehicles’ includes motor vehicle air conditioners.”

40. In Parkway’s response, it explained that its policy “is to accept only automobile carcasses, which have been fully stripped by autowreckers and other suppliers prior to the Company purchase of the carcasses.” Parkway continued, “. . . MVACs¹ are to be removed by the Company’s customers before the carcasses are delivered.” Parkway stated “Based on the foregoing, the Company has received no motor vehicles as such term is defined within the last three year period.”

41. EPA inspectors noted a motor vehicle with its air conditioner intact on the pile of vehicles staged for shredding at Parkway’s Facility in April 2010.

42. Parkway’s incorrect response to the Information Request constitutes a violation of a requirement of Section 114 of the Clean Air Act.

43. As provided in Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act, the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009. See 69 Fed. Reg. 7,121, 7,125 (Feb. 13, 2004), 73 Fed. Reg. 75,340, 75,345 (Dec. 11, 2008), and 78 Fed. Reg. 66,643, 66,648 (Nov. 6, 2013).

PRAYER FOR RELIEF

Wherefore, Plaintiff United States of America respectfully requests that the court grant the following relief:

1. Order Defendant to comply prospectively with all applicable requirements of the

¹ MVAC is an abbreviation for Motor Vehicle Air Conditioner.

Clean Air Act;

2. Assess civil penalties against Defendant up to the amounts provided in the Act per day for each violation of the Act at the Defendant's Facility;
3. Award the United States its costs and disbursements in this action; and
4. Grant the United States such other relief as this Court deems just and proper.

Respectfully Submitted,

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United States Department of Justice

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