

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	
v.)	Civil Action No.
)	
DERICHEBOURG RECYCLING USA,)	
)	
Defendant.)	
)	

COMPLAINT

The United States of America (“United States”), 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 Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action against Derichebourg Recycling USA (“Derichebourg” or “Defendant”), brought pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7613(b).

2. The United States alleges that Defendant, a “final processor” of small appliances and motor vehicle air conditioners (“MVACs”) in the scrap metal recycling process, has violated the regulatory requirements at 40 C.F.R. Part 82, Subpart F (“the Recycling and Emissions Reduction regulations”), promulgated pursuant to Title VI of the CAA, 42 U.S.C. §§ 7671-7671q, at three of Defendant’s facilities located in Houston, Texas. Specifically, Defendant

violated the Recycling and Emissions Reduction regulations by failing to either (a) recover refrigerants from appliances and MVACs prior to scrap recycling or (b) verify that all refrigerant had been properly recovered from the appliances and MVACs prior to their delivery at Defendant's facilities.

3. This Complaint seeks civil penalties and injunctive relief based for the alleged violations at Defendant's scrap metal recycling facilities located at or near 7501 Wallisville Road ("Wallisville Road Facility"), at or near 8202 West Montgomery Road ("Montgomery Road Facility") and at or near 1 Wharf Street ("Wharf Street Facility"), all of which are located in Houston, Harris County, Texas (collectively, "Facilities").

JURISDICTION AND VENUE

4. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). This Court has personal jurisdiction over Defendant, which does business in the State of Texas and in this judicial district.

5. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the alleged violations in this Complaint occurred or are occurring at the Facility, which is located in this District.

NOTICE

6. Notice of the commencement of this action was provided to the Texas Commission of Environmental Quality under Section 113(b) of the Act, 42 U.S.C. § 7413(b).

AUTHORITY

7. The United States Department of Justice has authority to bring this action on

behalf of the EPA under, *inter alia*, 28 U.S.C. §§ 516 and 519 and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

DEFENDANT

8. Defendant is a corporation organized under the laws of the State of Texas and is, and was at all times relevant to this Complaint, the owner and operator of the scrap metal recycling Facilities herein referred to as the Wallisville Road Facility, the Montgomery Road Facility and the Wharf Street Facility, located in Houston, Texas.

9. Defendant is a “person” within the meaning of Sections 113(b) and 302(e) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(e), and the applicable regulations promulgated pursuant to the CAA.

STATUTORY AND REGULATORY BACKGROUND

CLEAN AIR ACT

10. The CAA establishes a regulatory scheme designed to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

Title VI

11. In 1987, the United States signed on to the Montreal Protocol, an international agreement to protect and restore the stratospheric ozone layer, which shields Earth from harmful ultraviolet radiation from the sun. In response to the adoption of the Montreal Protocol, the U.S. Congress added Title VI, Stratospheric Ozone Protection, to the CAA Amendments of 1990.

12. Title VI of the CAA, 42 U.S.C. §§ 7671-7671q, mandates the phase-out of the production and consumption of class I and class II substances that deplete the ozone layer, such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

13. Section 608(a)(2) of the CAA, 42 U.S.C. § 7671g(a)(2), requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of class I and class II substances during service, repair, or disposal of appliances. These regulations, as amended, are codified at Title 40 of the Code of Federal Regulations, Part 82, Subpart F. The stated purpose of Subpart F is “to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances... in accordance with Title VI of the CAA.” 40 C.F.R. § 82.150(a).

14. The regulations at 40 C.F.R. § 82.155(b) require that the final processor—as defined in Paragraph 22, below—must either: (1) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or (2) verify, using a “signed statement” or a “contract,” that all refrigerant that had not previously leaked out of the appliance has been recovered from the appliance in accordance with 40 C.F.R. § 82.155(a). If the final processor is relying upon a signed statement, the statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If the final processor is relying upon a contract between the supplier and the final processor, the contract must either state that the supplier will (a) recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a) prior to delivery, or (b) verify that the refrigerant had been properly recovered prior to receipt by the supplier.

15. EPA has explained that the option to use a “contract” under the 40 C.F.R. Part 82, Subpart F, is only available when the final processor has an ongoing relationship with the supplier. In the Preamble to the 1993 rule, EPA described the contract option in Subpart F as being appropriate “for businesses such as the automotive dismantlers to streamline transactions

in cases where they maintain long-standing business relationships with the scrap dealers.” 58 Fed.Reg. 28660, 28704 (May 14, 1993). In 2016, when 40 C.F.R. Part 82, Subpart F was revised, EPA reiterated that “a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor.” 81 Fed. Reg. 82272, 82309 (Nov. 18, 2016).

16. Pursuant to 40 C.F.R. § 82.155(c), the final processor must maintain a copy of all signed statements or contracts obtained pursuant 40 C.F.R. § 82.155(b)(2) on site, in hard copy or in electronic format, for three years.

17. An “appliance” is defined as “any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, MVAC, refrigerator, chiller, or freezer. 40 C.F.R. § 82.152.

18. An “MVAC” is defined as a motor vehicle air conditioner as that term is further defined in 40 C.F.R. Part 82, subpart B.” 40 C.F.R. § 82.152.

19. An “MVAC-like appliance” is defined as “a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.” 40 C.F.R. § 82.152.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.