UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 13 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sandy Jimenez, Regional Environmental Manager
Derichebourg Recycling USA
1 Wharf Street
Houston, Texas 77012

Re: Finding of Violation
Derichebourg Recycling USA
Houston, Texas

Dear Ms. Jimenez:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Derichebourg Recycling USA (Derichebourg or "you") under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). We find that you have violated the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, specifically the regulations for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F, at no fewer than three of your facilities in Houston, Texas. EPA promulgated these regulations as required by Section 608 of the CAA, 42 U.S.C. § 7671g.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contacts in this matter are Natalie Topinka and Scott Connolly. You may contact Ms. Topinka at (312) 886-3853 or topinka.natalie@epa.gov, or Mr. Connolly at (312) 886-1493 or connolly.scott@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Edward Nam
Director
Air and Radiation Division

Enclosure

cc: Steve Thompson, EPA Region 6
Greg Fried, Chief, Stationary Source Enforcement Branch, OECA, EPA HQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Derichebourg Recycling USA	)	**FINDING OF VIOLATION**
Houston, Texas	)	
	)	**EPA-5-19-COE-01**
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 et seq.	)	
	)	

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Derichebourg Recycling USA (Derichebourg) is violating Section 608 of the Clean Air Act (CAA), 42 U.S.C. § 7671g. Specifically, Derichebourg is failing to reduce emissions of ozone depleting substances as required by EPA's regulations for the Protection of Stratospheric Ozone, Recycling and Emissions Reduction, found in 40 C.F.R. Part 82, Subpart F.

Statutory and Regulatory Authority

1. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances. As specified at 40 C.F.R. § 82.150(a), the purpose of the regulations 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.

2. Under 40 C.F.R. § 82.152, an appliance is 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, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

3. Under 40 C.F.R. § 82.152, an MVAC is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC "means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant."

4. Under 40 C.F.R. § 82.152, an MVAC-like appliance is 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.

5. Under 40 C.F.R. § 82.152, a small appliance is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

6. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

7. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—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 leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.[1]

8. Under 40 C.F.R. § 82.155(b)(2)(i) it is violation of 40 C.F.R. Part 82, Subpart F to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

9. Under 40 C.F.R. § 82.155(b)(2)(iii) if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because

[1] In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: "EPA notes here 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. 82,272, 82309 (Nov. 18, 2016).

of system failures, accidents or other unavoidable occurrences not causes by a person's negligence or deliberate acts such as cutting refrigerant lines.

Factual Background

10. Derichebourg owns and/or operates scrap recycling facilities (Facilities) at the following locations:

    a. 8202 West Montgomery Road, Houston, Texas (Montgomery Road Facility)
    b. 7501 Wallisville Road, Houston, Texas (Wallisville Road Facility)
    c. 1 Wharf Street, Houston, Texas (Wharf Street Facility)

11. At its Facilities, Derichebourg accepts for recycling and disposal, among other things, small appliances and MVACs that contain or once contained refrigerant, and is therefore subject to requirements at 40 C.F.R. Part 82, Subpart F.

12. EPA inspected the Derichebourg Facilities on the dates listed:

    a. The Montgomery Road Facility was inspected on November 7, 2018;
    b. The Wallisville Road Facility was inspected on November 9, 2018; and
    c. The Wharf St. Facility was inspected on November 8, 2018.

Findings and Violations

Montgomery Road Facility

13. At the time of the inspection, Derichebourg stated it accepts vehicles and small appliances at its Montgomery Road Facility if the refrigerants are no longer in the units.

14. At the time of the inspection, Derichebourg did not recover refrigerant from small appliances or MVACs delivered to its Montgomery Road Facility.

15. At the Montgomery Road Facility, EPA inspectors observed small appliances delivered for recycling from which the refrigerant had not been recovered.

16. At the Montgomery Road Facility, EPA inspectors observed small appliances that had been delivered for recycling from which refrigerant had not been recovered, but that had cut refrigeration lines.

17. At the Montgomery Road Facility, EPA inspectors observed MVACs that had been delivered for recycling.

18. At the time of the inspection, Derichebourg stated that it did not require documentation of refrigerant recovery for small appliances and MVACs arriving at the Montgomery Road facility empty of refrigerant.

19. By failing to recover refrigerants from appliances during scrap recycling, Derichebourg violated 40 C.F.R. § 82.155(b)(1) at the Montgomery Road Facility.

20. By failing to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Derichebourg violated 40 C.F.R. § 82.155(b)(2) at the Montgomery Road Facility.

Wallisville Road Facility

21. At the time of the inspection, Derichebourg did not recover refrigerant from small appliances or MVACs delivered to its Wallisville Road Facility.

22. At the Wallisville Road Facility, Derichebourg requires its customers to sign a statement titled "CFC REMOVAL" to verify that refrigerants have been recovered from appliances, but this document does not contain the name and address of the person who recovered the refrigerant or the date the refrigerant was recovered.

23. By failing to recover refrigerants from appliances during scrap recycling, or by accepting a signed statement to verify that refrigerants have been recovered without the name and address of the person who recovered the refrigerant or the date the refrigerant was recovered, Derichebourg violated 40 C.F.R. § 82.155(b)(1) and/or 40 C.F.R. § 82.155(b)(2) at the Wallisville Road Facility.

Wharf Street Facility

24. At the time of the inspection, Derichebourg did not recover refrigerant from small appliances or MVACs delivered to its Wharf Street Facility.

25. At the Wharf Street Facility, Derichebourg stated that it requires its customers to sign a statement titled "CFC REMOVAL" to verify that refrigerants have been recovered from appliances. but this document does not contain the name and address of the person who recovered the refrigerant or the date the refrigerant was recovered.

26. By failing to recover refrigerants from appliances during scrap recycling, or by accepting a signed statement to verify that refrigerants have been recovered without the name and address of the person who recovered the refrigerant or the date the refrigerant was recovered, Derichebourg violated 40 C.F.R. § 82.155(b)(1) and/or 40 C.F.R. § 82.155(b)(2) at the Wharf Street Facility.

<u>Environmental Impact of Violations</u>

27. These violations caused emissions of ozone depleting substances, including chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

28. CFCs and HCFCs have shown to contribute to the depletion of the stratospheric ozone layer, which protects life on Earth from the sun's harmful ultraviolet radiation (UV).

29. UV radiation has been associated with adverse health effects, including skin cancer, cataracts and immune suppression. UV radiation may also have adverse effects on plant life and aquatic ecosystems.

2/13/19
Date

Edward Nam
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-19-COE-01, by Certified Mail, Return Receipt Requested, to:

Sandy Jimenez, Regional Environmental
Manager
Derichebourg Recycling USA
1 Wharf Street
Houston, Texas 77012

I also certify that I sent copies of the Finding of Violation by e-mail to:

Steve Thompson
EPA Region 6
thompson.steve@epa.gov

Greg Fried
Chief, Stationary Source Enforcement Branch
US EPA, Office of Enforcement and Compliance Assurance
fried.gregory@epa.gov

On the 15th day of February 2019

for Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70150640000045965217 4