



November 20, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: 60-Day Notice of Citizen Suit

Dear Ms. McCarthy:

By this letter, New Era Group, Inc., gives the Environmental Protection Agency (EPA) notice of its intent to sue EPA under § 304(a)(2) of the Clean Air Act (“CAA”). We give you this notice in your official capacity as EPA’s Administrator pursuant to § 304(b)(2), 42 U.S.C. § 7604(b)(2). New Era Group intends to bring this suit on its behalf and on behalf of its members (Plaintiffs).

New Era Group intends to sue EPA for its failure to enforce the Clean Air Act Title 42 U.S.C. The Public Health And Welfare, Chapter 85 - Air Pollution Prevention And Control § 7401-7671q requirements for reporting of data that relates to CO₂e.

Background

The United States Environmental Protection Agency Promulgated 40 CFR Part 98 on November 30, 2010. The Rule was published at 74458 Federal Register/ Vol. 75, No.229/Tuesday, November 30, 2010. The subject Rule was enacted as the result of a Congressional Finding set-forth in 42 U.S.C. § 7401(a), declaring, in, § 7401(b) a need to improve National Air Quality and develop programs to achieve that stated goal. The United States Environmental Protection Agency has now a National ***Mandatory Green House Gas Reporting System***.

The President implemented a Climate Action Plan, which requires EPA to take immediate action to protect the environment as well as the public health and welfare. Climate Action Plan, June 2014.¹ This Executive Directive calls for the EPA to implement actions to reduce the production and consumption of HFC Gases. According to the Environmental Investigation Agency HFCs have greater global warming potential 100 to 1,000 of time more damaging to the climate than carbon dioxide. For example HFC-404a, commonly use in commercial refrigeration is almost 4,000 times more damaging to the climate than CO₂. (Page 1)²

¹ <https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>

² http://eia-global.org/images/uploads/EIA_HFC-free_Procurement_Report_FINAL_FINAL.pdf



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The Montreal Protocol is a living treaty, which has undergone many amendments. The Current Global effort of the United States is to amend this Treaty to provide for a Global Phase-down of the use and consumption of HFC Chemicals. This effort will result in the United States establishing HFC baselines to limit production and consumption of HFCs.

Bases for Suit:

EPA has not been enforcing the Regulation for mandatory Greenhouse Gas Reporting.

According to EPA's Greenhouse gas reporting "Flight Data" the companies that are in compliance with the regulation requiring reporting of bulk imports of CO₂e are listed in table 1. In addition to that group the number of companies reporting under the requirements for equipment containing Greenhouse gases is listed in table 2.

3M Company	MN	Honeywell Inc.	PA
3M Cottage Grove Center	MN	Hudson Technologies Co.	NC
Air Prod&Chem Tamaqua PLT	PA	Juno International, LLC	NJ
Altair Partners LP	NJ	Kivlan & Co. Inc.	IL
Air Liquide Electronics U.S. LP	PA	Linde Electronics & Specialty Gases	NJ
Airgas Refrigerants, Inc.	GA	Lenz Sales & Dist., Inc.	PA
Airgas Specialty Gases, Inc.	GA	Mexichem Fluor Inc.	NJ
Arkema Inc.	PA	Matheson Tri-Gas	IL
AutoZone Parts, Inc.	TN	National Refrigerants Inc.	LA
Automart Distributors Inc.	FL	Nitrous Oxide Corp	NJ
Coolgas, Inc.	TX	Praxair Inc.	PA
Certified Specialty Gases, Inc.	NV	Solvay Specialty Polymers USA	GA
Combs Gas, Inc.	TX	Solvay Fluorides LLC	CT
Concorde Specialty Gases	NJ	Specialty Gases of America	NJ
Daikin America Inc.	AL	Tulstar Products Inc.	OK
E.I. Dupont De Nemours & Co.	DE	Tier 5 Labs, LLC	IL
Electronicfluorocarbons, LLC	PA	USA Refrigerants	NJ
GSK, Inc.	NC	Wal-Mart Stores	AR
Honeywell Inc.	NJ	Weltron Inc.	MD



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Table 2			
2014- Importers of Equipment Containing Fluorinated GHGs			
Alstom Grid Inc.	PA	Mitsubishi Electric Power Products	PA
American Honda Motor Co., Inc.	CA	Mitsubishi Motors North America	CA
BMW of North America, LLC	NJ	Nissan North America, Inc.	TN
Carrier Corporation	CT	Owens Corning Foam Insulation	OH
Dalkin Applied Americas Inc.	MN	Panasonic Appliances Refrigeration	CA
De Longhi America Inc.	NJ	Rheem Manufacturing Co.	GA
Electrolux Home Products, Inc.	NC	S&C Electric Co.	IL
FCA Chrysler Technology Center	MI	Samsung Electronics Co.	NJ
Friedrich Air Conditioning Co.	TX	Siemens Industry, Inc.	NC
General Electric, Appliances	KY	Subaru of America, Inc.	NJ
General Motors LLC	MI	Target Corporation	MN
Hyundai Motors	AL	The Dow Chemical Co.	MI
Hyundai-Kia America Tech Center	MI	Toyota Motor Sales, USA Inc.	CA
Johnson Controls, Inc.	WI	Trane	NC
LG Electronics USA, Inc.	NJ	Volvo Cars of North America	NJ
Lennox International Inc.	TX	Wal-Mart Stores, Inc.	AR
Mazda North American	CA	Whirlpool Corporation	MI

There are number of companies importing that have failed to comply with this rule both as it relates to bulk shipments as well as equipment imported to the United States which fall under this Mandatory Reporting Requirement.

Based on knowledge and belief, these include:

In the absence of action by your agency, it is our intention to institute actions *Qui Tam*, to assess and collect the maximum daily fines which should have been imposed by your agency.



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As in the past EPA will use this data to determine the future baseline for HFC Production and Consumption Phase-downs. While the actual number of companies may not reflect the seriousness of this matter the sheer volume of Greenhouse gas chemical and the CO₂e imports not reported are significant and will surely skew the data the EPA might use to establish future rules. Further, it is beyond dispute that a significant portion of the material imported will eventually be released into the atmosphere. Failure to obtain accurate information on the true quantity of imported material will render it impossible for EPA to accurately assess the need for and extent of any future regulation of this subject.

These facts require immediate attention and action. EPA is preparing to release the results of the GHG Reporting from 2010 through 2014 by GHG types. This information will be useless and detrimental if it is incomplete or inaccurate. Again we stress that rule making must be based in facts and the best information to insure that EPA adheres to the directives that are based in law.

There has long been a mismatch between what the market needs and what EPA allocates. EPA's persistent unwillingness to collect reliable data regarding inventory was made clear in the most recent HCFC Phase-out Rule. In promulgating the April 3 rule, EPA relied on "anecdotal information" and "industry feedback" to determine how much of the need for HCFC-22 could be met through the existing inventory, reclamation, and alternative refrigerants. See 78 Fed. Reg. at 20013; *Analysis of HCFC-22 Servicing Needs in the U.S. Air Conditioning and Refrigeration Sector: Additional Considerations for Estimating Virgin Demand* (Adjustment Memo), 2, 5.

In this final rulemaking process, EPA's inventory estimates for 2015-19 were based on limited stakeholder response to EPA's 2013 request for information as of year-end 2012 under § 114 of the Clean Air Act. Protection of Stratospheric Ozone: ***Adjustments to the Allowance System for Controlling HCFC Production, Import and Export, 78 Fed. Reg. 78072 (Dec. 23, 2013)***. EPA has explained it surveyed only nine companies because (1) it believes the inventories of those companies represent approximately 80% of the market and (2) it could not conduct a larger survey without obtaining clearance from the Office of Management and Budget (OMB), which would have taken a long time. This unfortunate action cannot be duplicated in this serious matter.

New Era Group has continuously argued, that incomplete information cannot represent anywhere near an accurate baseline on future baselines for the market. The current effort, however commendable, falls short of addressing the concern that EPA lacks accurate data on the GHG Inventory.



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EPA should conduct additional enforcement and compliance under § 114 of the Clean Air Act and take into consideration the information that will become available through these additional reporting's. This action on the part of EPA should eliminate any future Notice of Data Availability (NODA) being issued.

New Era Group and its counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file a complaint.

As required by 40 C.F.R. § 54.3, the person providing this notice is:

New Era Group, Inc.,
17 Grey Moss Road,
Murrells Inlet, South Carolina 29576.

Please direct all correspondence and communications regarding this matter to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Williams", with a long horizontal flourish extending to the right.

Peter V. Williams

cc: Ms. Sarah Dunham
Director
Office of Atmospheric Programs

Ms. Drusilla Hufford
Director
Stratospheric Protection Division

Diane E. McConkey, Esq.
Office of General Counsel