



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF
AIR AND RADIATION

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF TRANSPORTATION AND AIR QUALITY**

VIA ELECTRONIC MAIL

August 5, 2022

IN THE MATTER OF:

SureCan Inc.
3024 N 750 E
North Ogden, UT 84414

ATTENTION: Brad Ouderkirk
(brad@SureCanusa.com or 801-791-2458)

Dear Mr. Ouderkirk:

This letter is to inform you that the U.S. Environmental Protection Agency (“EPA”) is voiding the certificate of conformity issued to SureCan Inc. (hereinafter referred to as “SureCan”) for emission family FSURPP202BSC. This emission family includes all portable fuel containers (PFCs) produced by SureCan under this certificate, which was issued on April 2, 2015, and expired on April 2, 2020.

This certificate was issued based upon statements you made and information you provided in your certification application, as required by 40 CFR Part 59, Subpart F, “Control of Evaporative Emissions from New and In-Use Portable Fuel Containers.” In your application you assert full compliance with all the certification, testing, and compliance requirements, including submitting data and unconditionally certifying that all the PFCs in the emission family complied with the requirements of 40 CFR, Part 59, Subpart F, other referenced parts of the CFR, and the Clean Air Act (CAA or the Act). However, EPA believes the emissions data SureCan submitted in its application to EPA was false or incomplete given EPA’s emissions test results from SureCan’s production units demonstrated noncompliance with the emissions standard for PFCs. Specifically, EPA’s compliance testing of SureCan’s production units showed an 80% failure rate. Consequently, it appears the passing emissions test data SureCan submitted to EPA in its

certification application did not accurately represent the emissions of SureCan's PFCs and was therefore false or incomplete information.

EPA's decision to issue SureCan's certificate of conformity was based on our review of the information and statements in your certificate application and our assumption that the information and statements in the application were accurate and complete, including SureCan's emissions data certifying that your PFCs met the applicable emissions standard. After completing our review of your application, EPA relied on SureCan's statements and information to find that your emission family met all requirements of 40 CFR Part 59, Subpart F and the CAA, and issued a certificate of conformity to SureCan.

On February 22, 2022, EPA sent SureCan a letter to inform you of our concerns pertaining to your certificate of conformity (EPA Notice Letter). We gave you advance, detailed notice of these specific concerns and provided you with an opportunity to demonstrate or achieve compliance with all the applicable requirements governing this certificate of conformity. We specifically requested that SureCan provide us with information that would support the statements of compliance made in your original certification application.

On April 11, 2022, EPA received a three-page letter from Matt Smoot at SureCan in response to the EPA Notice Letter (SureCan Response Letter). The SureCan Response Letter does not address or contradict EPA's underlying concerns regarding the false or incomplete information submitted in SureCan's certification application or SureCan's failure to unconditionally demonstrate that its PFCs comply with the requirements of Part 59, Subpart F, other referenced parts of the CFR, and the CAA. As explained further in Attachment A, the SureCan Response Letter does not argue or otherwise demonstrate that the emissions data you submitted to EPA for emission family FSURPP202BSC shows SureCan was compliant with the applicable regulations, nor does it provide further explanation or information regarding the discrepancies found between SureCan's emissions data in its certification application and EPA's emissions test data of SureCan's production units. Instead, it recounts SureCan's multiple attempts, totaling four separate test failures, that demonstrate SureCan was unable to provide compliant test results with the original or modified PFC after the initial failed test. SureCan only asserts that its PFCs are made with an innovative design that reduces spilling of fuel and feels the EPA regulatory focus is misdirected. While we note your concern, you have not provided the EPA with a demonstration that your PFCs meet the emissions standard or that your test data was not false or incomplete at the time EPA issued the certificate for emission family FSURPP202BSC.

For the reasons set forth above and as described in greater detail in Attachment A to this letter, EPA concludes that SureCan submitted false or incomplete information in its application for certification of emission family FSURPP202BSC. Therefore, EPA is voiding your certificate of conformity as of the date of this letter. Voiding your certificate of conformity means the certificate is void ab initio (i.e. retroactively), which means it is as if the certificate was never issued. As such, all PFCs introduced into U.S. commerce under the voided certificate are in violation of Part 59, subpart F, whether or not they were introduced before the certificate or exemption was voided. See 40 CFR § 59.680 (definition of "void"). Accordingly, all PFCs introduced into U.S. commerce under this certificate are considered noncompliant products.

Section 113 of the CAA and 40 CFR § 59.602(a) prohibit the sale of PFCs unless such PFCs are covered by a valid certificate of conformity. Each introduction of a PFC into U.S. commerce under this certificate is a separate violation of CAA section 113 and you may face civil penalties up to \$48,762 per PFC, as well as other sanctions.

You may request a hearing on EPA's decision to void your certificate in accordance with the procedures set forth in 40 CFR § 59.699 and 40 CFR Part 1068, Subpart G. A request for a hearing must be in writing and include a description of your objection and any supporting data. Your written hearing request must be received by EPA within 30 calendar days of your receipt of this letter and should be addressed to:

Mr. Cleophas Jackson, Director
Gasoline Engine Compliance Center
U.S. EPA, Office of Transportation and Air Quality
2000 Traverwood Drive
Ann Arbor, MI 48105

Please contact Mr. Cleophas Jackson of my staff at (734) 214-4824 or jackson.cleophas@epa.gov, should you have any questions.

Sincerely,

Byron Bunker, Division Director
Compliance Division
Office of Transportation & Air Quality

ENCLOSURES

cc: Jex Heaton
Matt Smoot
SureCan Inc.
3024 N 750 E
North Ogden, UT 84414
(jex@surecanusa.com and matt@surecanusa.com)

ATTACHMENT A

I. Summary of EPA's Concerns

As a result of EPA's compliance tests of SureCan's Portable Fuel Containers (PFCs) from emission family FSURPP202BSC, EPA believes the specific facts and actions described below warrant the voiding of the certificate of conformity ("certificate" or "COC") EPA issued to SureCan. Based on that compliance testing, EPA believes the information SureCan submitted to EPA in SureCan's certification application was false or incomplete. EPA's reliance on the veracity of that information led to EPA's decision to issue a certificate to SureCan. As described in more detail below, EPA's compliance investigation reveals that the emissions test data SureCan submitted to EPA did not represent SureCan's production and should not have been relied upon in the decision to issue a certificate for SureCan's emission family FSURPP202BSC.

II. Statutory and Regulatory Background

PFC manufacturers are generally subject to the requirements and prohibitions in 40 CFR Part 59, Subpart F, "Control of Evaporative Emissions from New and In-Use Portable Fuel Containers." These regulations require the following: "New portable fuel containers that are subject to the emissions standards of this part must be covered by a certificate of conformity that is issued to the manufacturer of the container." 40 CFR 59.601(b); *see also* 40 CFR 59.602(a) ("No manufacturer or importer may sell, offer for sale, introduce or deliver for introduction into commerce in the United States, or import any new portable fuel container that is subject to the emissions standards of this subpart ... unless it is covered by a valid certificate of conformity, it is labeled as required, and it complies with all of the applicable requirements of this subpart, including compliance with the emissions standards for its useful life."). Section 113 of the Clean Air Act (CAA) gives EPA authority to bring an enforcement action against a PFC manufacturer and assess penalties for the violations of these requirements. *See also* 40 CFR 59.602(g), (h).

To obtain a certificate of conformity, a PFC manufacturer submits an application to EPA following the specific requirements that PFC manufacturers must meet for certification and compliance. *See e.g.* 40 CFR 59.621-59.653. These requirements include the specific information that must be included in the certification application (40 CFR 59.623) and which emissions configuration should be tested to demonstrate compliance (40 CFR 59.626). Specifically, 40 CFR 59.626(b) requires a PFC manufacturer do the following: "Select an emission-data unit from each emission family for testing. You must test a production sample or a preproduction product that will represent actual production. Select the configuration that is most likely to exceed (or have emissions nearest to) the applicable emission standard ...". Under 40 CFR 59.607(b) and 59.623(k), PFC manufacturers must "certify that all the information submitted is accurate and complete" and "[u]nconditionally certify that all the products in the emission family comply with the requirements of this subpart, other referenced parts of the CFR, and the Clean Air Act."

Under 40 CFR 59.611(a), “Hydrocarbon emissions from portable fuel containers may not exceed 0.3 grams per gallon per day when measured with the test procedures in §§ 59.650 through 59.653...” A PFC manufacturer may demonstrate compliance with this evaporative emissions standard by satisfying the requirements in 40 CFR 59.627(a), which states: “For purposes of certification, your emission family is considered in compliance with an evaporative emission standard in § 59.611(a) if the test results from all portable fuel containers in the family that have been tested show measured emissions levels that are at or below the applicable standard.” On the other hand, 40 CFR 59.627(b) states: “Your emission family is deemed not to comply if any container representing that family has test results showing an official emission level above the standard.” Section 59.630 provides that EPA “may test any portable fuel container subject to the standards of this subpart” to determine whether it complies with the applicable emissions standards.

In the final rule preamble, EPA explained its approach for the test procedures included in the regulations: “These test procedures are authorized under [CAA] section 183(e)(4) as part of a system of regulations to achieve the appropriate level of emissions reductions. Emission testing on all containers that manufacturers produce is not feasible due to the high annual production volumes and the cost and time involved with emissions testing. Instead, before the containers are introduced into commerce, the manufacturer will need to receive a certificate of conformity from EPA that the containers conform to the emissions standards, based on manufacturers’ applications for certification. Manufacturers must submit test data on a sample of containers that are prototypes of the products the manufacturer intends to produce. The certificate issued by EPA will cover the range of production containers represented by the prototype container. As part of the application for certification, manufacturers also need to declare that their production cans will not deviate in materials or design from the prototype cans that are tested. If the production containers do deviate, then they will not be covered by the certificate, and it will be a violation of the regulations to introduce such uncertified containers into commerce. Manufacturers must obtain their certification from EPA prior to introducing their products into commerce.” 72 Fed. Reg. 8428, 8501 (Feb. 26, 2007). EPA issues certificates for a defined production period, which is defined in 40 CFR 59.680 as “the period in which a portable fuel container will be produced under a certificate of conformity. The maximum production period is five years.” EPA issued SureCan’s PFC certificate for the maximum production period of five years.

EPA will issue a certificate to a PFC manufacturer if “we determine [the] application is complete and shows that the emission family meets all the requirements of this subpart and the Act.” 40 CFR 59.629(a). However, EPA may void a certificate if EPA later determines a PFC manufacturer submitted false or incomplete information. 40 CFR 59.629(c)(2). To void a certificate means to invalidate the certificate “retroactively” (e.g. from the time of certification). 40 CFR 59.680 (definition of “void”) (“Portable fuel containers introduced into U.S. commerce under the voided certificate...is a violation of this subpart, whether or not they were introduced before the certificate was voided...”). The holder of the voided certificate is liable for all PFCs introduced into U.S. commerce under the voided certificate and may face civil and criminal penalties. CAA section 113; 40 CFR 59.602(g), (h).

III. Facts and Rationale Which Warrant Voiding this Certificate

As a result of EPA's investigation into SureCan's certification and testing practices, EPA believes the specific facts and actions, as described below, show that SureCan's certificate for emission family FSURPP202BSC was issued based on SureCan's submission of false or incomplete information in its certification application. As explained above, SureCan's practices warrant EPA voiding your certificate.

A. Summary of EPA's Investigation

1. SureCan's data and information submittal to the EPA.

On March 18, 2015, SureCan submitted to EPA a certification application for its PFCs. In its application, SureCan provided evaporative emissions test results from three 2.5-gallon, red, gasoline PFC emission-data units. SureCan's emissions tests were performed at Testing Services Group, LLC (TSG), in Lapeer, Michigan.

SureCan certified in its application that the PFC emission test "[w]as tested in accordance to the Evaporative Emission Standard, 40 CFR [Part 59], Subpart F, Control of Evaporative Emissions from new and In-Use Portable Fuel Containers, Sections §59.650 to §59.653 [sic]." SureCan also certified that its PFC, "[i]s compliant with the requirements of Evaporative Emission Standard, 40 CFR [Part 59], Subpart F, Control of Evaporative Emissions from new and In-Use Portable Fuel Containers, Sections §59.611 [sic]."

Data provided in SureCan's application showed one PFC emission-data unit's test was invalid due to SureCan's internal investigation revealing that "the 'nozzle nut' located at the nozzle to container interface was not properly tightened prior to testing." The other two emission-data units showed passing evaporative emission test results, with hydrocarbon (HC) measurements of 0.2 and 0.3 grams(g)/gallon(gal)/day, compared to an HC emission standard of 0.3 g/gal/day.

After reviewing the application, EPA agreed that the emission-data units selected by SureCan were compliant with the applicable regulations, and that the improperly tightened nozzle nut that resulted in one emission-data unit failing its emissions test was an unrepresentative test, and therefore an invalid one. Based in part on the passing emissions test data provided by SureCan on the other two emission-data units, along with SureCan's certification that the tests were run in accordance with the applicable regulations, EPA determined the SureCan PFC certification application was complete and met all the applicable statutory and regulatory requirements. As a result, EPA issued SureCan a certificate on April 2, 2015. EPA issued the certificate for the maximum production period of 5 years, as allowed in 40 CFR 59.680, making the certificate's expiration on April 2, 2020.

After issuing the certification, upon further review, EPA determined that the test lab, TSG, used the incorrect test fuel in its PFC emissions work. TSG used CE10 fuel, which is Fuel C with 10% ethanol by volume. The specified grade of gasoline is to be blended with reagent grade ethanol in a volumetric ratio of 90.0 percent gasoline to 10.0 percent ethanol by volume. 40 CFR 59.650(c), 40 CFR 1065.710(c). This fuel blend is commonly referred to as

IE10. EPA determined that the CE10 fuel blend used by TSG did not meet the requirements specified for general testing gasoline and should not have been used for the emissions testing for the PFCs.

On November 3, 2015, EPA sent a letter to SureCan requiring it to run a new set of PFC emissions tests using IE10 test fuel. On October 24, 2017, SureCan submitted to EPA evaporative emissions test results from six 2.5-gallon PFC emission-data units using IE10 test fuel. Tests were performed at SGS (formerly TSG and purchased by SGS) in Lapeer, Michigan. All six emission-data test units showed compliant HC emissions levels ranging from 0.2 g/gal/day to 0.3 g/gal/day.

2. EPA's compliance testing.

As part of a compliance testing initiative, EPA began testing PFCs from various manufacturers in 2017. Manufacturer's products were randomly selected, and EPA selected SureCan PFCs for testing beginning in the 2018 calendar year. In the fall of 2018, staff in EPA's Gasoline Engine Compliance Center (GECC) in the Compliance Division (CD) in the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR) purchased six SureCan 2.5-gallon PFCs from a local retailer in Michigan. The PFCs were labeled with SureCan's emission family name and demonstrated no material defect that would differentiate them from the certified configuration. Emissions testing was performed from August 20, 2018, to February 14, 2019, at Excel Engineering, an EPA contract facility located in Diagonal, Iowa.

Testing was run according to the procedures outlined in 40 CFR 59.653 using IE10 test fuel. One emission-data unit is the reference container and is untested, per the requirements in 59.653(c). Four of the five emission-data units failed the emissions test with hydrocarbon (HC) levels ranging from 0.41 to 0.73 grams/gallon/day (g/gal/day), compared to an HC standard of 0.3 g/gal/day. Testing concluded in February 2019, and the test report was completed in April 2019. EPA notified SureCan of this emissions failure. SureCan's email response indicated the last two emission tests run by SureCan resulted in failures as well, and the company modified its design and was in the process of running a third emissions test.

On July 22, 2019, EPA staff informed Jex Heaton at SureCan via phone call that EPA's emissions tests results indicated SureCan's PFCs were not compliant with the evaporative emissions standard. EPA further informed SureCan that the company should consider making modifications to its design and/or production processes and then run new emissions tests prior to submitting its next certification application. SureCan acknowledged receipt of EPA's recommendation in a July 22, 2019, email to EPA staff Julia Giuliano.

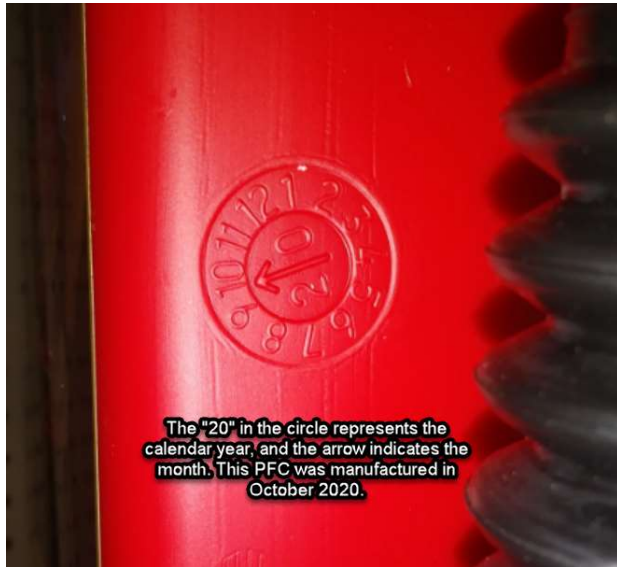
On February 18, 2020, Jex Heaton from SureCan sent an email to Julia Giuliano at EPA stating its original PFCs had failed a new round of emissions tests in the summer of 2019. The email further explained that after that failed testing, SureCan made changes to its PFC assembly process and then retested a modified version of its PFCs. Mr. Heaton then explained in his email that the modified PFCs also failed their emissions tests in December 2019, and the company was currently testing a second, modified PFC. Because of these issues, SureCan

requested in its email an extension to its April 2, 2015, certificate as SureCan did not expect its emissions tests on this second, modified PFC to be completed before the PFC certificate expiration date of April 2, 2020. In a February 19, 2020, email response to SureCan, Julia Giuliano from EPA denied the request to extend the certification period for engine family FSURPP202BSC.

On April 21, 2020, Julia Giuliano from EPA sent Jex Heaton at SureCan the written report from EPA's emissions testing of SureCan's PFCs and inquired about the company's current PFC testing status. On April 21 and July 16, 2020, Jex Heaton of SureCan responded that SureCan's emissions testing was under way and was expected to be completed toward the end of the summer in 2020.

On August 12, 2020, SureCan sent EPA a request for an alternate test procedure that would allow the spout's cap to remain intact during the emissions test. Section 59.653(b) requires all manual closures be left off the container and spout during the emission test. Therefore, EPA denied this request because it directly conflicts with the test procedures outlined in 40 CFR 59.650 through 40 CFR 59.653. At present, SureCan has not provided EPA compliant emissions test data on its PFCs, either the original PFCs or the second, modified PFCs.

In May 2021 and again in January 2022, EPA staff found SureCan PFCs for sale at a local Tractor Supply store in Michigan. PFC manufacturing dates are typically stamped on the bottom of the containers. Upon inspection of these PFCs, EPA found all the manufacturing dates to be after the certificate expiration date of April 20, 2020. In May 2021, EPA found two of the PFCs had manufacturing dates of October 2020, and the third PFC had a manufacturing date of January 2021. In January 2022, EPA found two PFCs with manufacturing dates of August 2021 and October 2021. A picture of one of the PFC manufacturing dates is shown below. Manufacturers are prohibited under § 59.602(a) from selling, offer for sale, introducing or delivering for introduction into commerce, or importing any new portable fuel container that is subject to the emissions standards of this ... unless it is covered by a valid certificate of conformity, it is labeled as required, and it complies with all of the applicable requirements of this subpart, including compliance with the emissions standards for its useful life. Under § 59.602(g), each PFC introduced into commerce in violation of this prohibition is considered a separate violation of Part 59 and the Act. This matter was referred to EPA's Office of Enforcement & Compliance Assurance (OECA), Air Enforcement Division (AED).



B. EPA’s Notice Letter to SureCan

On February 9, 2022, EPA sent SureCan a letter (EPA Notice Letter) notifying you of our concerns regarding emission family FSURPP202BSC. The EPA Notice Letter provided you with advance notice of our specific concerns and an opportunity to demonstrate or achieve compliance with all the applicable requirements governing your certificate of conformity. In the EPA Notice Letter, we provided you the basis for our concerns regarding our belief that SureCan provided false or incomplete information in your original certification application. Separately, we provided you with our production test report and explained in our letter how EPA’s compliance testing showed your products had failed to meet the applicable emissions standards. We also explained how this failure to comply with the emissions standard would seem to indicate you could not unconditionally certify that your PFCs would meet the applicable requirements. *See* 40 CFR § 59.623(k). The EPA Notice Letter provided you 30 calendar days to respond and provide EPA with evidence that supports the statements of compliance and information in SureCan’s original application for a certificate of conformity.

C. SureCan Response Letter

On April 9, 2022, EPA received a letter from Mr. Matt Smoot of SureCan. The letter was not provided on company letterhead, was not dated, and was addressed only to “Julia,” which appears intended for Julia Giuliano, Certification Representative in the Gasoline Engine Compliance Center (GECC) within the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR) at EPA. It appears the letter by Matt Smoot was intended to address the EPA Notice Letter so we will refer to the letter as the SureCan Response Letter for the remainder of this document. While Matt Smoot makes numerous assertions in the SureCan Response Letter, none of Mr. Smoot’s statements demonstrate SureCan’s compliance with the statutory and regulatory requirements.

Mr. Smoot first provides a description of the multiple attempts SureCan made to certify its PFCs. But none of these multiple attempts, as described in the SureCan Response Letter, or your attached emissions testing documents, provide passing emissions test results for PFC emission family FSURPP202BSC or the modified PFCs for which SureCan sought a new certificate. We provided SureCan with an opportunity to demonstrate that emission family FSURPP202BSC was compliant for the 2015-2020 certificate of conformity. Instead, the SureCan Response Letter detailed its four failed attempts to meet the emissions standard for a *different* PFC or for a *new* certificate. For example, you provide the following summary of your efforts to conduct testing for a new certificate for a modified PFC:

We finished the test on June 8, 2019, 4 cans passed but two did not. We immediately started the testing process again with a new and improved vent seal. Because of equipment failure at VEXA our cans were left in the soak period 5 weeks longer than they were supposed to causing the seams to split on two of the cans. We once again started testing at a new facility SGS because of the equipment problems we had at VEXA.¹ (sic)

These and similar statements in the SureCan Response Letter about these different testing programs for a modified product do not demonstrate that SureCan's statements, information and emissions test results submitted in its original certification application for emission family FSURPP202BSC were accurate. Instead, such statements fail to refute EPA's emissions test results for the PFCs in this emission family and show a pattern of noncompliance in SureCan's products.

SureCan next concedes it continued to produce PFCs under emission family FSURPP202BSC after that certificate expired. SureCan informed EPA that it had "failed our initial testing but had resubmitted new cans for testing."² SureCan then states it was told by EPA certification representative Julia Giuliano, "okay," and SureCan should let her know when testing was complete.³ SureCan then states: "At this time our certification had expired but with your response we thought we were okay to proceed as long as we were in testing." It is unclear what SureCan means with "okay to proceed," but it appears SureCan is suggesting that EPA's response was tacit approval for SureCan to continue to produce and introduce into commerce PFCs after its certificate expired. As an initial matter, the testing SureCan was conducting is not relevant to this matter since it was for a *different* PFC and for a *new* certificate, not for the PFC in emission family FSURPP202BSC. More importantly, nothing in EPA's communications with Surecan gave it the ability or approval to produce any PFCs under an expired certificate. Manufacturers are required to possess a valid certificate prior to introducing their PFCs into U.S. commerce. 40 CFR § 59.602(a). SureCan had no justification for its continued production and introduction into commerce of its original PFC under an expired certificate.

¹ SureCan Response Letter, pg. 1.

² *Id.*

³ *Id.*

The SureCan Response Letter contains several statements regarding how your innovative design for PFCs is “the most environmentally friendly gas can that is made,”⁴ and EPA’s actions toward voiding your certificate are misdirected and you feel as if the Agency is “punishing” you for your innovation.⁵ While EPA acknowledges the statements in your letter, the SureCan Response Letter offers no argument or demonstration that SureCan’s PFCs produced and sold under the certificate for emission family FSURPP202BSC comply with the applicable requirements. Instead, the SureCan Response Letter details its emissions testing for its modified PFC not previously certified by EPA. The letter explains how SureCan ran three separate emissions tests starting in February 2019 and ending after its existing certificate expired in April 2020, all of which failed. In addition, SureCan indicated it ran a fourth emissions test in the summer of 2020 but with the spout cap installed on your PFC. You state that you appealed to EPA to have these emissions test results used to demonstrate compliance with the emission standard for your new certificate, but EPA denied your request⁶. As explained in EPA’s August 25, 2020 email denying your request: “The regulations clearly state that all manual closures must be left off the container and spout during testing.” Our denial was based on 40 CFR § 59.653(b)(3), which you referenced in your August 12, 2020 request for an alternate test procedure. But all this effort to certify a modified PFC, regardless of its innovative design, does not demonstrate that the PFCs for which EPA had issued a certificate under emission family FSURPP202BSC were in compliance with the applicable requirements.

The SureCan Response Letter also argues that the EPA should be more focused on regulating fuel spillage rather than evaporative emissions from the storage of PFCs.⁷ We note SureCan’s suggestion; however, SureCan must still comply with EPA’s existing PFC emissions standard to receive a certificate of conformity and introduce those PFCs into commerce. SureCan’s suggestion does not address its inability to demonstrate it meets the requirements for the certificate, which is the basis of our action and the purpose of your response to the EPA Notice Letter. EPA’s future regulatory direction, whatever that may be, does not remove the obligation for manufacturers to comply with the existing regulations by providing complete and accurate information for certification nor does it provide a basis to violate 40 CFR § 59.602(a) and introduce PFCs into commerce without a certificate of conformity.

Lastly, the SureCan Response Letter states that SureCan is leaving the PFC marketplace to explore opportunities in the safety can industry.⁸ SureCan’s pursuit of safety can certification does not demonstrate compliance with EPA regulations for which the certificate for emission family FSURPP202BSC was issued.

Rather than providing a demonstration that SureCan’s PFCs are compliant with the applicable requirements, the SureCan Response Letter seems to support EPA’s assessment that SureCan’s PFCs are not compliant with the emissions standard and the statements and information provided in the application should not have been relied upon by the EPA.

⁴ *Id.*, pg. 2.

⁵ *Id.*, pg. 1.

⁶ *Id.*, pg. 1.

⁷ *Id.*, pg. 2.

⁸ *Id.*

D. Basis for Voiding Certificate

EPA finds the specific facts and actions described above warrant voiding SureCan's certificate for emission family FSURPP202BSC. SureCan originally provided emissions test results to EPA in support of its certification application. EPA assumed that original emissions test data was accurate in showing SureCan's PFCs were compliant with the applicable emissions standard and relied on that information to issue the certificate. However, EPA later determined that original emissions testing was not conducted with the correct test fuel. After EPA notified SureCan of the test fuel error, SureCan provided new emissions test data using the correct test fuel to EPA which seemed to show passing emissions test results on five PFC emission-data units. EPA assumed this second submission was accurate and representative of production PFCs and relied on its accuracy and representativeness for demonstrating the certificate was properly issued.

However, EPA's own emissions test results of SureCan's PFCs differ greatly from the emissions test results provided by SureCan. EPA's emissions testing indicates an 80% failure rate (4 out of 5 tested PFCs failed), which means SureCan is not in compliance with the applicable emissions standard. 40 CFR 59.627(b) ("Your emission family is deemed not to comply if any container representing that family has test results showing an official emission level above the standard."). SureCan's own emissions test data, which had purportedly showed compliance with the emissions standard when submitted to EPA, are not accurate and representative given the high failure rate found in the sample of PFCs EPA tested.

Additionally, SureCan's subsequent failed attempts to generate new emissions test data – both on its original PFC and its modified PFCs – that would enable SureCan to overcome EPA's testing results on its original PFCs and recertify this emission family with its modified PFCs also calls into question the veracity and completeness of the original emissions test results upon which EPA relied in issuing the certificate.

Given the events as described above, SureCan is unable to demonstrate its PFCs "show measured emissions levels that are at or below the applicable standard." 40 CFR 59.627(a). As a result, SureCan cannot "unconditionally certify that all the products in the emission family comply with the requirements of this subpart, other referenced parts of the CFR, and the Clean Air Act." 40 CFR 59.623(k). Considering the entirety of the factual record, EPA concludes that SureCan submitted false or incomplete information in support of its original certificate application, providing a basis for EPA to void the certificate. 40 CFR 59.629(c)(2).

IV. SureCan's Certificate is Void

As explained above, based on SureCan submitting false or incomplete information in its application for certification, the EPA is voiding the certificate of conformity for SureCan emission family FSURPP202BSC, as of the date of this letter, pursuant to 40 CFR § 59.629(c). Each introduction of any PFC into U.S. commerce under this certificate, at any time, is a violation of CAA section 113, and you may face civil penalties up to \$48,762 per PFC, as well as

other sanctions. In addition, SureCan may not introduce into commerce any additional PFCs covered by the voided certificate. 40 CFR § 59.602(a).

You may request a hearing on EPA's decision to void your certificate in accordance with the procedures set forth in 40 CFR §59.699 and 40 CFR Part 1068, Subpart G. A request for a hearing must be in writing and include a description of your objection and any supporting data. Your written hearing request must be received by EPA within 30 calendar days of your receipt of this letter and should be addressed to:

Mr. Cleophas Jackson, Director
Gasoline Engine Compliance Center
Compliance Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
jackson.cleophas@epa.gov
2000 Traverwood Drive
Ann Arbor, Michigan, 48105

We may decide to approve your request if we find that it raises a substantial factual issue. If we agree to hold a hearing, we will use the procedures specified in 40 CFR § 59.699 and 40 CFR Part 1068, Subpart G. Please contact Mr. Cleophas Jackson at (734) 214-4824 or jackson.cleophas@epa.gov, should you have any questions.