



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

Open Mountain Energy, LLC
3451 N Triumph Boulevard, Suite 201
Lehi, Utah 84043
brady@openmountainenergy.com

RE: Open Mountain Energy, LLC – Notice of Violation

Dear Brady Olson:

The U.S. Environmental Protection Agency (EPA) is issuing the enclosed Notice of Violation (NOV) to Open Mountain Energy, LLC (you). The EPA alleges that you have violated the American Innovation and Manufacturing (AIM) Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder at 40 C.F.R. Part 84.

The EPA is issuing the enclosed NOV pursuant to Section 113(a) of the Clean Air Act (the Act or CAA), 42 U.S.C. § 7413(a)(3), which applies to the AIM Act and any regulation promulgated thereunder. See 42 U.S.C. § 7675(k)(1)(C).

Without making a determination that your business or organization is a small business, the EPA is providing you with this Small Business Resources Information Sheet, which provides important information that may assist small businesses in identifying and complying with environmental requirements: <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please note the opportunity for you to request a conference with the EPA to present information on the identified violations in the NOV, efforts you have taken to comply, and the steps you will take to prevent future violations. A conference should be requested within ten calendar days of the date of this letter. You may have counsel represent you at this conference. Please direct any request to confer to Josh Zaharoff, Attorney Advisor, at Zaharoff.Josh@epa.gov or (312) 886-4460, and Nathan Dancher, Environmental Engineer, at Dancher.Nathan@epa.gov or (202) 564-0346.

Sincerely,

**Greene,
Mary E**

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Date: 2023.01.26
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Mary E. Greene, Director
Air Enforcement Division
United States Environmental Protection Agency

Enclosure

cc (by email): Kellie Ortega, HFC Program Lead (Acting), EPA
Nathan Dancher, EPA
Josh Zaharoff, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

IN THE MATTER OF:)
)
Open Mountain Energy, LLC)
Lehi, Utah)
)
) **NOTICE OF VIOLATION**
Proceedings Pursuant to)
Section 113(a)(3) of the Clean Air Act,)
42 U.S.C. § 7413(a)(3))

NOTICE OF VIOLATION

Statutory and Regulatory Authority

1. The American Innovation and Manufacturing (AIM) Act, 42 U.S.C. § 7675, provides the EPA with authority to regulate hydrofluorocarbons (HFCs), which are greenhouse gases.
2. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
3. 40 C.F.R. § 84.1(b) states that Subpart A applies to “any person that produces, transforms, destroys, imports, exports, sells or distributes, offers for sale or distribution, recycles for fire suppression, or reclaims a regulated substance.”
4. 40 C.F.R. § 84.3 defines “regulated substance” as: “[A] hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3). A current list of regulated substances can be found in appendix A to this part.”
5. 40 C.F.R. § 84.3 defines “bulk” to mean: “[A] regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.”
6. 40 C.F.R. § 84.3 defines “consumption allowances” as: “[A] limited authorization to produce and import regulated substances; however, consumption allowances may be used to produce regulated substances only in conjunction with production allowances. A person’s consumption allowances are the total of the allowances obtained under 40 C.F.R. § 84.11 or § 84.15 as may be modified under §§ 84.17 (availability of additional

- consumption allowances), 84.19 (transfer of allowances), and 84.35 (administrative consequences).”
7. 40 C.F.R. § 84.3 defines “application-specific allowance” as “a limited authorization granted in accordance with subsection (e)(4)(B)(iv) of the AIM Act for the production or import of a regulated substance for use in the specifically identified applications that are listed in that subsection and in accordance with the restrictions contained at § 84.5(c).”
 8. 40 C.F.R. § 84.3 defines “import” as: “[T]o land on, bring into, or introduce into, . . . any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.”
 9. 40 C.F.R. § 84.3 defines “importer” as: “[A]ny person who imports a regulated substance into the United States. ‘Importer’ includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred.”
 10. 40 C.F.R. § 84.3 defines “person” as “any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.”
 11. 40 C.F.R. § 84.5(b)(1) states that “[n]o person may import bulk regulated substances, except: . . . [b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported”
 12. 40 C.F.R. § 84.5(b)(2) states that “[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).”
 13. 40 C.F.R. § 84.3 defines exchange value equivalents (EVe) as “the exchange value-weighted amount of a regulated substance obtained by multiplying the mass of a regulated substance by the exchange value of that substance.”
 14. Appendix A of 40 C.F.R. Part 84 lists the substances regulated by the AIM Act by HFC, chemical formula, and exchange value.
 15. Appendix A of 40 C.F.R. Part 84 includes the compound HFC-245fa.

16. Appendix A of 40 C.F.R. Part 84 lists the exchange value as 1,030 for HFC-245fa.

Facts

17. Open Mountain Energy, LLC is a company that specializes in geothermal power generation located at 3451 N Triumph Boulevard in Lehi, Utah.
18. HFC-245fa is a bulk regulated substance.
19. On or about September 10, 2022, Open Mountain Energy, LLC imported approximately 20,000 kg of HFC-245fa from China.
20. The 20,000 kg of HFC-245fa described in Paragraph 19 is the “Subject HFC.”
21. The EPA calculates metric tons of EVe (MTEVe) by multiplying the mass of the regulated substance in kg by the exchange value of the bulk regulated substance and dividing the product by 1,000, pursuant to 40 C.F.R. § 84.3.
22. 20,000 kg of HFC-245fa is equivalent to about 20,400 MTEVe.
23. Open Mountain Energy, LLC did not expend any consumption or application-specific allowances or receive a non-objection notice from the EPA for the Subject HFC.

Alleged Violations

24. Based on the facts in the section above, the EPA alleges that the Subject HFC is a bulk regulated substance.
25. The bulk regulated substance that is the subject of this NOV was imported without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substance imported, a violation of 40 C.F.R. § 84.5(b).

Enforcement

The EPA's investigation into this matter is continuing. The violations alleged in this NOV are sufficiently supported by the evidence described above to warrant the issuance of this NOV. The EPA may find additional violations as the investigation continues.

Section 113(a)(3) of the Act, 42 U.S.C § 7413(a)(3), provides the Administrator with several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

Greene,
Mary E

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Mary E. Greene, Director
Air Enforcement Division
United States Environmental Protection Agency