

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Open Mountain Energy, LLC)	Docket No. CAA-HQ-2023-
)	8438
)	
)	
)	


FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

Dated: January 9, 2024

ENVIRONMENTAL APPEALS BOARD


Aaron P. Avila
Environmental Appeals Judge

¹ The panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila and Wendy L. Blake.

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CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought for alleged violations of the American Innovation in Manufacturing Act of 2020 (“AIM Act”), 42 U.S.C. § 7675, which governs the import of bulk hydrofluorocarbons (HFCs), under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), which authorizes the EPA to bring administrative civil enforcement actions.
2. HFCs are potent greenhouse gases that accelerate climate change. The United States has committed, as a signatory of the Kigali Amendment to the Montreal Protocol, to reduce its production and consumption of HFCs by 85% in a stepwise manner by the year 2036.
3. Complainant is Mary E. Greene, Director, Air Enforcement Division, of the United States Environmental Protection Agency.
4. Respondent is Open Mountain Energy, LLC, a Delaware corporation headquartered in Lehi, Utah. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent (together, the “Parties”), having agreed that settlement of this action is in the public interest, consent to the issuance of the attached final order

(“Final Order” or “Order”) ratifying this Consent Agreement (“Consent Agreement” or “Agreement”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement and Final Order.

B. JURISDICTION

6. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.
7. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).
8. The Environmental Appeals Board is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).
9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. This proceeding arises under the AIM Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder, which impose limits on HFC production and consumption.
11. EPA is authorized to enforce the AIM Act and any regulation promulgated thereunder pursuant to the federal enforcement authorities established by Section 113(a) of the CAA, 42 U.S.C. § 7413(a). 42 U.S.C. § 7675(k)(1)(C).

12. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
13. The regulations at 40 C.F.R. Part 84, Subpart A, apply to anyone who imports a regulated substance. 40 C.F.R. § 84.1(b).
14. The regulations at 40 C.F.R. Part 84, Subpart A, contain the following definitions:
 - (a) An “application-specific allowance” is “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).” 40 C.F.R. § 84.3.
 - (b) “Bulk” is defined as: “[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.” 40 C.F.R. § 84.3.
 - (c) “Consumption allowances” are “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.” 40 C.F.R. § 84.3.
 - (d) “Exchange value equivalent” (EVe) is defined 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.” 40 C.F.R. § 84.3.

- (e) “Import” is defined as “to land on, bring into, or introduce into, or attempt to 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.” 40 C.F.R. § 84.3.

- (f) “Importer” is defined 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.” 40 C.F.R. § 84.3.

- (g) “Person” is defined 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.” 40 C.F.R. § 84.3.

- (h) “Regulated substance” is defined 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).” 40 C.F.R. § 84.3.

- 15. Starting January 1, 2022, “[n]o person may import bulk regulated substances, except by

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.” 40 C.F.R. § 84.5(b)(1).

16. A current list of regulated substances, their chemical formulas, and their exchange values can be found in Appendix A to 40 C.F.R. Part 84. *See* 40 C.F.R. § 84.3.
17. The compound HFC-245fa is regulated by the AIM Act and has an exchange value of 1,030. 40 C.F.R. Part 84, Appendix A.
18. “Each 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).” 40 C.F.R. § 84.5(b)(2).
19. “Every kilogram of bulk regulated substances imported ... constitutes a separate violation of this subpart.” 40 C.F.R. § 84.5(b)(6).

D. STIPULATED FACTS

20. Open Mountain Energy, LLC is a company that specializes in geothermal power generation and is located at 3451 N Triumph Boulevard in Lehi, Utah.
21. On or about September 20, 2022, Open Mountain Energy, LLC, through an intermediary broker, imported approximately 20,000 kg of HFC-245fa from China under Customs Entry Number 9LR-11225535 (“Subject HFCs”). Open Mountain Energy, LLC’s Importer Number is 81-303034100.
22. The Subject HFCs were imported and subsequently held at the Port of Oakland. On or about December 27, 2022, Open Mountain Energy, LLC re-exported the Subject HFCs.
23. Open Mountain Energy, LLC, did not possess or expend any allowances when

importing the Subject HFCs.

24. Using the formula provided by 40 C.F.R. § 84.3, the EPA calculated the total metric tons of exchange value equivalents (“MTEVe”) of the Subject HFCs to be approximately 20,600.
25. The Subject HFCs were transported in an ISO tank.
26. Respondent is a “person,” as that term is defined in 40 C.F.R. § 84.3.
27. Respondent is an “importer,” as that term is defined in 40 C.F.R. § 84.3.
28. The Subject HFCs are bulk regulated substances, as defined above at 40 C.F.R. § 84.3.

E. ALLEGED VIOLATIONS OF LAW

29. The EPA alleges that, on or about September 20, 2022, for each of the 20,000 kg of the Subject HFCs, Respondent violated the prohibition on importing bulk regulated substances into the United States without expending allowances as required by 40 C.F.R. § 84.5(b).

F. TERMS OF CONSENT AGREEMENT

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) admits the facts stipulated in Section D;
 - (c) neither admits nor denies the violations alleged in Section E;
 - (d) consents to the assessment of a civil penalty as stated below;
 - (e) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

- (f) waives its rights to appeal the Order accompanying this Agreement.
31. For the purpose of this proceeding, Respondent:
- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions related to the Respondent;
 - (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Columbia; and
 - (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this Agreement or Order, or both, and to seek an additional penalty for noncompliance with this Agreement or Order, and agrees that federal law shall govern in any such civil action.
32. Civil Penalty. The civil penalty agreed upon by the Parties for settlement purposes is \$41,566.
33. Penalty Payment. Respondent agrees to:

- (a) Pay the civil penalty of \$41,566 (“EPA Penalty”) within 30 calendar days of the Effective Date of this Agreement.
 - (b) Pay the EPA Penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>.
 - (c) Identify each and every payment with the docket number of this Agreement and Final Order, No. CAA-HQ-2023-8438.
 - (d) Within 24 hours of payment of the EPA Penalty, send proof of payment via electronic mail to Josh Zaharoff at zaharoff.josh@epa.gov and Nathan Dancher at dancher.nathan@epa.gov. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the docket number.
34. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- (a) request the Attorney General to bring a civil action in an appropriate United States District Court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable

by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, subparts C and H; and

(d) (1) suspend or revoke Respondent's licenses or other privileges, or (2) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

35. By signing this Agreement, Respondent acknowledges that this Agreement and Order, including identifying information such as name, federal tax ID number, mailing and e-mail address, will be available to the public when the Agreement and Certificate of Service are filed and uploaded to a searchable database and agrees that this Agreement does not contain any confidential business information or other personally identifiable information.

36. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

37. By signing this Agreement, Respondent agrees to acceptance of the Complainant's: (a) digital or an original signature on this Agreement; and (b) service of the fully executed Agreement on the Respondent by mail or electronically by e-mail. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

38. By signing this Agreement, Respondent certifies that the information it has supplied

concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

39. Except as qualified by Paragraph 34(a), each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

40. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations listed in Section E of this Agreement.
41. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
42. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings among the Parties with respect to the subject matter hereof.
43. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended after it is ratified except upon the written agreement of both parties, and approval of the Environmental Appeals Board.
44. Any violation of this Order may result in a civil judicial action for an injunction, or civil penalties of up to \$117,468 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information

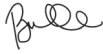
- submitted under this Agreement in an administrative, civil judicial, or criminal action.
45. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
46. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
47. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

48. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order ratifying the Agreement. The Effective Date of the Agreement shall be the date of issuance of the Final Order. The EPA will transmit a copy of the Final Order and ratified Consent Agreement to the Respondent.

The foregoing Consent Agreement In the Matter of Open Mountain Energy, LLC, Docket No. CAA-HQ-2023-8438, is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENT:



Digitally signed by Brady Olson
Date: 2023.12.14 11:15:31
-07'00'

12/14/2023

Signature

Date

Printed Name:

Brady Olson

Title: Manager, Open Mountain Energy, LLC

Address: 245 E. Liberty Street, Suite 520, Reno, NV 89501

Federal Tax Identification Number: 81-3030341

The foregoing Consent Agreement In the Matter of Open Mountain Energy, LLC, Docket No. CAA-HQ-2023- 8438, is Hereby Stipulated, Agreed, and Approved.

COMPLAINANT:

Greene,
Mary E

Digitally signed by
Greene, Mary E
Date: 2023.12.21
16:08:13 -05'00'

Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Open Mountain Energy, LLC, Docket No. CAA-HQ-2023-8438, were sent to the following persons in the manner indicated:

By Electronic Mail:

Josh Zaharoff
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
zaharoff.josh@epa.gov

Krista K. McIntyre
Stoel Rives LLP
krista.mcintyre@stoel.com

Dated: Jan 09, 2024

Annette Duncan

Annette Duncan
Administrative Specialist