



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

Kirk W. Humbrecht
President
Phoenix Fire Systems, LLC d/b/a Basic Fire Protection
744 W Nebraska Street
Frankfort, IL 60423
khumbrecht@phoenixfire.com; info@phoenixfire.com

RE: Phoenix Fire Systems, LLC. – Notice of Violation (HFC Imports)

Dear Mr. Humbrecht:

The U.S. Environmental Protection Agency (“EPA”) is issuing the enclosed Notice of Violation (NOV) to Phoenix Fire Systems, LLC. (“Phoenix Fire” or “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 this NOV under Section 113(a) of the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. § 7413(a)(3)¹ for violations of 40 C.F.R. Part 84.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), gives the EPA several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, or bringing a judicial criminal action. The EPA is issuing this NOV based on information described in detail below that represents specific violations of applicable requirements relating to the importation of hydrofluorocarbons (“HFCs”).

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>.

¹ The AIM Act provides that Sections 113 and 114 of the CAA, 42 U.S.C. § 7413 and 42 U.S.C. § 7414, apply to the AIM Act and any regulation promulgated thereunder “as though this section were expressly included in title VI of that Act.” See 42 U.S.C. § 7675(k)(1)(C).

Phoenix Fire may request a conference with the EPA to present information on the identified violations in this NOV, efforts you have taken to comply, and the steps you will take to prevent future violations within ten (10) calendar days following receipt of this NOV. You may have counsel represent you at this conference. Please direct such request to Hallie Lipsey, Attorney-Advisor, at lipsey.hallie@epa.gov or (202) 564-2448.

Sincerely,

Mary E. Greene, Director
Air Enforcement Division

Enclosure

cc (by email): Amelie Isin, HFC Program Lead, EPA
Nathan Dancher, Environmental Engineer, EPA
Hallie Lipsey, Attorney-Advisor, EPA
Kirk W. Humbrecht, President, Phoenix Fire Systems, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

IN THE MATTER OF:

Phoenix Fire Systems, Inc
744 Nebraska Street
Frankfort, IL 60423

Proceedings Pursuant to
Section 113(a)(3) of the Clean Air Act,
42 U.S.C. § 7413(a)(3)

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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, and requires the EPA to phase down HFC production and consumption.
2. The AIM Act provides that section 113 of the CAA, 42 U.S.C. § 7413, applies to the AIM Act and any regulation promulgated thereunder “as though this section were expressly included in title VI of that Act.” See 42 U.S.C. § 7675(k)(1)(C).
3. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.
4. 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.”
5. 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.”
6. 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.”

7. 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.”
8. 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 and may be modified under [40 C.F.R.] §§ 84.17 (availability of additional consumption allowances), 84.19 (transfer of allowances), and 84.35 (administrative consequences).”
9. 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).”
10. 40 C.F.R. § 84.3 defines “import” as “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.”
11. 40 C.F.R. § 84.3 defines “importer” as “any 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.”
12. 40 C.F.R. § 84.3 defines “exchange value” as “the value assigned to a regulated substance in accordance with AIM Act subsections (c) and (e), as applicable, and as provided in appendix A to this part.”
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 to 40 C.F.R. Part 84 lists the substances regulated by the AIM Act by HFC, chemical formula, and exchange value.
15. Appendix A to 40 C.F.R. Part 84 includes the compound R-23, also known as HFC-23.
16. A current list of regulated substances, their chemical formulas, and their exchange values are specified in Appendix A to 40 C.F.R. Part 84. See 40 C.F.R. § 84.3; 40 C.F.R. Part 84, Appendix A.

17. Appendix A to 40 C.F.R. Part 84 lists the exchange value for R-23 as 14,800, which is the highest exchange value for all HFCs listed in Appendix A to 40 C.F.R. Part 84.
18. 40 C.F.R. § 84.5(b)(1) (2022)² states that “[n]o person may import bulk regulated substances, except: (i) [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 with the required amount of allowances calculated to the tenth, but a minimum expenditure of 0.1 allowances is required for any import of regulated substances; (ii) [a]fter receipt of a non-objection notice for substances for use in a process resulting in their transformation or their destruction in accordance with § 84.25(a); (iii) [a]fter receipt of non-objection notices for used regulated substances imported for destruction in accordance with § 84.25(b); or (iv) [a]s a transshipment in accordance with § 84.31(c)(3) if all transhipped regulated substance is exported from the United States within six months of its import.”
19. 40 C.F.R. § 84.5(b)(2) (2022) 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).”

Facts

20. Phoenix Fire Systems, LLC (“Phoenix Fire”) is a business located at 744 W Nebraska Street, Frankfort, Illinois 60423. Phoenix Fire sells fire protection systems and provides fire protection system contract work.
21. Phoenix Fire is a “person” within the meaning of 40 C.F.R. § 84.3.
22. On or about October 4, 2022, Phoenix Fire was the consignee for an import shipment, which included 5 cylinders containing R-23 HFCs with a total net mass of approximately 186.4 kg (the “Subject HFCs”).
23. The Subject HFCs imported on or about October 4, 2022, as described in Paragraph 23 above, are “bulk” “regulated substances” within the meaning of 40 C.F.R. § 84.3.
24. As consignee for the import of the Subject HFCs, Phoenix Fire was an “importer” of the Subject HFCs, within the meaning of 40 C.F.R. § 84.3.
25. Pursuant to 40 C.F.R. § 84.3, the metric tons of exchange value equivalent (“MTEVe”) of regulated substances are calculated by multiplying the mass of the regulated substance in kg by the exchange value of the regulated substance and dividing the product by 1,000. Under this

² The regulations at 40 C.F.R. Part 84, Subpart A were subsequently changed after the alleged violations in this Notice of Violation took place. If a version of the regulations was different in 2022 from the current version of the regulations, it is cited as “2022” in this Notice of Violation.

formula, 186.4 kg of R-23 is equivalent to about 2,758.7 MTEVe.

26. Pursuant to 40 C.F.R. § 84.5(b)(1) (2022), no person could legally import the Subject HFCs unless, at the time of import, a person expended 2,758.7 consumption or application-specific allowances or received a non-objection notice from the EPA for the Subject HFCs.
27. The importer of record, Ward's Hydraulic Services, LTD, located at 224 Cayer St #1, Coquitlam, British Columbia V3K 5B1, Canada, did not possess or expend any consumption or application-specific allowances, nor did it receive a non-objection notice from the EPA for the Subject HFCs.
28. Phoenix Fire did not possess or expend any consumption or application-specific allowances, nor did it receive a non-objection notice from the EPA for the Subject HFCs.

Alleged Violations

29. Based on the facts in the section above, the EPA alleges that the Subject HFCs are bulk regulated substances subject to the import restrictions of 40 C.F.R. § 84.5(b)(1) (2022).
30. Based on the facts in the section above, the EPA alleges that the Subject HFCs were imported on or about October 4, 2022 without any person expending consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the Subject HFCs or receiving a non-objection notice from the EPA for the Subject HFCs, in violation of 40 C.F.R. § 84.5(b)(1) (2022).
31. Phoenix Fire is an "importer" of the Subject HFCs within the meaning of 40 C.F.R. § 84.3; consequently, pursuant to 40 C.F.R. § 84.5(b)(2) (2022), Phoenix Fire is liable for violating of 40 C.F.R. § 84.5(b)(1) (2022).

Enforcement

The EPA's investigation into this matter is continuing. The above information represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in 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.

Effective Date

This Notice shall become effective immediately upon issuance.

Mary E. Greene, Director
Air Enforcement Division