



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

TRANSMITTED VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Randor Bernal
President
Conformatic Corporation
PO Box 51522
Toa Baja Puerto Rico 00950

RE: Conformatic Corporation – Notice of Violation (HFC Imports)

Mr. Bernal,

The United States Environmental Protection Agency (“EPA”) is issuing the enclosed Notice of Violation (“NOV”) to Conformatic Corporation (“Conformatic” 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 (“CAA”), 42 U.S.C. § 7413(a)(3)¹ for violations of 40 C.F.R. Part 84.

Section 113(a)(3) of the CAA 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. 42 U.S.C. § 7413(a)(3). 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).

Conformatic Corporation – Notice of Violation

Conformatic may request a conference with the EPA to present any information the EPA should consider with respect to the alleged violations in the 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 any requests to Elfego Felix, Engineer, at felix.elfego@epa.gov, or have your legal counsel contact Ethan Thompson, Attorney-Advisor, at thompson.ethan@epa.gov or 202-564-3027.

Sincerely,

**MARY
GREENE**  Digitally signed
by MARY GREENE
Date: 2024.09.27
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Mary E. Greene, Director
Air Enforcement Division

Enclosure

cc (by email): Amelie Isin, EPA
Elfego Felix, EPA
Ethan Thompson, EPA
Jose Lopez, jolopez@conformatic.com
Randor Bernal, rabernal@conformatic.com
info@conformatic.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

IN THE MATTER OF:)
)
Conformatic Corporation)
Calle B Edificio 8 Mario Julia Ind. Park)
Guaynabo, Puerto Rico 00965)
) **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

The AIM Act

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, or to 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.”
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 equivalent” (“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 compounds HFC-32, HFC-125, HFC-134a,

and HFC-143a.

16. Appendix A to 40 C.F.R. Part 84 lists the exchange value for HFC-32 as 675, the exchange value for HFC-125 as 3,500, the exchange value for HFC-134a as 1,430, and the exchange value for HFC-143a as 4,470.
17. 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.”
18. 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).”
19. 40 C.F.R. § 84.31(c)(7) (2022)³ requires that a person importing a regulated substance, or their agent, must submit an advanced notice that includes the information described in 40 C.F.R. § 84.31(c)(7)(i) - (xvi) no later than 14 days before importation via a Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface.
20. 40 C.F.R. § 84.31(c)(1) (2022) requires that an importer of record importing a regulated substance submit to the relevant agency official a report containing the information detailed in 40 C.F.R. § 84.31(c)(1)(i) - (ix) within 45 days after the end of each quarter.

Facts

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.

³ 40 C.F.R. § 84.31(c)(7) (and other sections) has since been modified to require that the importer of record submit an advance notification report “no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation,” effective September 18, 2023 (*See* 88 Fed. Reg. 46,836, 46,897 (July 20, 2023)).

21. Conformatic Corporation is an air conditioning company located at Calle B Edificio 8, Mario Julia Ind. Park, Guaynabo, Puerto Rico 00965.
22. Conformatic Corporation is a “person” as that term is defined at 40 C.F.R. § 84.3.
23. R-404A is a refrigerant blend that contains the following bulk regulated substances: HFC-125, HFC-134a, and HFC-143a. The exchange value for R-404A is 3,922.
24. R-410A is a refrigerant blend that contains the following bulk regulated substances: HFC-32 and HFC-125. The exchange value for R-410A is 2,088.
25. On or about March 2, 2022, Conformatic imported approximately 2,862.8 kg of HFC-134a, 1,635 kg of R-404A, and 10,044.4 kg of R-410A from Jamaica without expending consumption or application specific allowances or receiving a non-objection notice from the EPA.
26. On or about June 27, 2022, Conformatic imported approximately 2,856 kg of HFC-134a, 2,616 kg of R-404A, and 13,648 kg of R-410A from China without expending consumption or application specific allowances or receiving a non-objection notice from the EPA.
27. The HFCs and HFC blends described in paragraphs 25 and 26 are collectively the “Subject HFCs.”
28. The EPA calculates metric tons of exchange value equivalent (“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.
29. 5,718.8 kg of HFC-134a is equivalent to approximately 8,177.9 MTEVe; 4,251 kg of R-404A is equivalent to approximately 16,672.4 MTEVe; 23,692.4 kg of R-410A is equivalent to approximately 49,469.7 MTEVe. The combined total MTEVe for the Subject HFCs is approximately 74,320.
30. Conformatic did not expend any consumption or application specific allowances, provide adequate transshipment notice, or receive a non-objection notice from the EPA for the Subject HFCs.
31. Conformatic did not timely submit an advanced notice via an authorized customs database containing the information required by 40 C.F.R. § 84.31(c)(7) (2022) for either of the shipments identified above.
32. Conformatic did not timely submit a quarterly report as required by 40 C.F.R. § 84.31(c)(1) (2022) for both the first and second quarters of 2022.

Alleged Violations

33. Based on the facts in the section above, the EPA alleges that the Subject HFCs are bulk regulated substances that were imported on or about March 3, 2022, and June 27, 2022, without the importer expending consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, in violation of 40 C.F.R. § 84.5(b)(1) (2022).
34. Based on the facts in the section above, the EPA alleges that Conformatic failed to timely submit advanced notice for either the March 3, 2022 shipment or the June 27, 2022 shipment in violation of 40 C.F.R. § 84.31(c)(7) (2022).
35. Based on the facts in the section above, the EPA alleges that Conformatic failed to timely submit quarterly reports for both the first and second quarters of 2022 in violation of 40 C.F.R. § 84.31(c)(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.

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Mary E. Greene, Director
Air Enforcement Division