



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 15 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory M. Clouse
Vice President/General Manager
Franklin Iron and Metal Corp.
1939 East First Street
Dayton, Ohio 45403

Re: Administrative Order EPA-5-20-113(a)-COE-02

Dear Mr. Clouse:

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case. If you have any questions about the Order, please contact me at 312-886-3850.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan A. Frank", is written over a horizontal line.

Nathan A. Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Padmavati Bending/C-14J
Bob Hodanbosi, OEPA
James Kavalec, OEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:	)	EPA-5-20-113(a)-COE-02
	)	
Franklin Iron and Metal Corp.	)	Proceeding Under Sections 113(a)(1)(3) and
Dayton, Ohio	)	114(a)(1) of the Clean Air Act, 42 U.S.C.
	)	§§ 7413(a)(1)(3) and 7414(a)(1)
_____	)	

Administrative Consent Order

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Franklin Iron and Metal Corp. (Franklin) under Sections 113(a)(1)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances.

3. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

4. The purpose of 40 C.F.R. Part 82, Subpart F is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. *See* 40 C.F.R. § 82.150(a).

5. Under 40 C.F.R. § 82.152, a “person” means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

6. Under 40 C.F.R. § 82.152 an “appliance” is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

7. Under 40 C.F.R. § 82.152, an “MVAC” is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

8. Under 40 C.F.R. § 82.152, an “MVAC-like appliance” is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.

9. Under 40 C.F.R. § 82.152, a “small appliance” is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged

terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

10. Under 40 C.F.R. § 82.152, “class I” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix A.

11. Under 40 C.F.R. § 82.152, “class II” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix B.

12. Under 40 C.F.R. § 82.152, “Substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in this subpart, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses that are specified in § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refers to all other substitutes and end-uses not so specified in § 82.154(a)(1).

13. Under 40 C.F.R. § 82.152, “refrigerant” means, for purposes of 40 C.F.R. Part 82, Subpart F, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

14. Under 40 C.F.R. § 82.152, “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if

it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

15. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

16. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

(1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155 (a); or

(2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.¹

17. Under 40 C.F.R. § 82.155(b)(2)(i), it is violation of 40 C.F.R. Part 82, Subpart F to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

18. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155 (a)

¹ In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: “EPA notes here that a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor.” 81 Fed. Reg. 82272, 82309 (Nov. 18, 2016).

before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

19. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

20. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is in violation of any requirement or prohibition of Title VI - Stratospheric Ozone Protection, 42 U.S.C. § 7671-7671q. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

21. The Administrator of EPA may require any person who is subject to any requirement of the CAA to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

Findings

22. Franklin owns and/or operates scrap recycling facilities (Facilities) at the following locations:

- a. 1939 East First Street, Dayton, Ohio (Dayton Facility)
- b. 1620 East Pleasant Street, Springfield, Ohio (Springfield Facility)

23. Franklin is a corporation so it is a “person” within the meaning of 40 C.F.R. § 82.152.

24. At its Facilities, Franklin accepts for recycling and disposal “small appliances” and “MVACs,” within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone depleting substances or substitutes.

25. The ozone depleting substances or substitutes in the small appliances and MVACs Franklin accepts for recycling are “refrigerants” within the meaning of 40 C.F.R. § 82.152.

26. Franklin’s recycling of small appliances and MVACs constitutes “disposal” within the meaning of 40 C.F.R. § 82.152.

27. As a person that disposes of small appliances and MVACs that contain refrigerants, Franklin is subject to requirements at 40 C.F.R. Part 82, Subpart F.

28. On May 17, 2019, EPA issued to Franklin a Finding of Violation (FOV) alleging that it violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at its Dayton Facility.

29. On June 26, 2019, representatives of Franklin and EPA discussed the May 17, 2019 FOV (FOV conference).

30. Franklin failed to recover refrigerants from appliances during scrap recycling, or failed to verify that refrigerants had been recovered by using a signed statement or contract, at its Dayton Facility, in violation of 40 C.F.R. § 82.155(b)(1) and/or 40 C.F.R. § 82.155(b)(2).

31. Franklin failed to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155 (a) before delivery of the items to its Dayton Facility, in violation of 40 C.F.R. § 82.155(b)(2)(ii).

32. At the FOV conference, Franklin agreed to implement a program to recover refrigerant and/or verify proper refrigerant recovery for small appliances and MVACs at its Facilities.

Compliance Program

33. By the effective date of this Order, Franklin must achieve, demonstrate and maintain compliance with 40 C.F.R. Part 82, Subpart F at its Facilities including, but not limited to, the requirements in paragraphs 34 - 39 for any small appliance, MVAC or MVAC-like appliance that it receives at its Facility. Franklin must also take the actions in paragraphs 40 - 44 by the dates specified in each paragraph.

34. Franklin may only accept small appliances, MVACs, or MVAC-like appliances with intact refrigerant lines provided it uses refrigerant recovery to recover any remaining refrigerant in accordance with § 82.155(a).

35. Franklin must have the refrigerant recovered by a properly trained individual. If that individual is an employee of Franklin, Franklin will ensure that the individual is properly trained to use the refrigerant recovery equipment.

36. If the individual recovering refrigerant is an employee of Franklin, Franklin must send the recovered refrigerant to an EPA-certified entity for reclamation or destruction.

37. Franklin must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines if it knows or has reason to know that the refrigerant has not been properly recovered in accordance with 40 C.F.R. § 82.155(a).

38. Franklin must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines unless its supplier can certify, using a verification statement that meets the requirements of 40 C.F.R. § 82.155(b)(2) and is included as Attachment 1 to this Order, that the refrigerant was properly recovered. For suppliers with whom Franklin has had a long-standing business relationship, this requirement may be satisfied by Franklin

entering into the contract that meets the requirements of 40 C.F.R. § 82.155(b)(2) and is included as Attachment 2 to this Order.

39. By the effective date of this Order, Franklin must notify its suppliers in writing that it will not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines, unless the suppliers can certify that the refrigerant was properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to cutting or dismantling the refrigerant lines using the verification statement included as Attachment 1 to this Order or the contract included as Attachment 2 to this Order.

40. Franklin must retain copies of receipts for all refrigerant it collects and sends to another company for reclamation or destruction. Franklin must also document the number of small appliances, MVACs, or MVAC-like appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

41. Within 60 days of the effective date of this Order, Franklin must develop and follow a written refrigerant management plan that incorporates the provisions of paragraphs 34 through 39. Franklin must provide training on the refrigerant management plan and make it available to its employees and contractors that play any role with the contracting, purchasing, accepting, handling, or processing of small appliances, MVACs, or MVAC-like appliances. Franklin will keep a record of such training for the duration of this Order.

42. Within 60 days of the effective date of this Order, Franklin must provide EPA with:

- a. documentation that it purchased refrigerant recovery equipment and has an individual trained in recovering refrigerant or has contracted the services of an individual qualified to perform refrigerant recovery, pursuant to paragraphs 34-36;

- b. proof of its compliance with the notice requirements of paragraph 39; and
- c. A copy of its written refrigerant management plan required by paragraph 41.

43. After six months, one year, 18 months, and two years of the effective date of this Order, Franklin must submit to EPA under Section 114(a)(1) of the CAA, 42 U.S.C.

§ 7414(a)(1):

- a. any completed verification statements and contracts used pursuant to paragraph 38;
and
- b. A copy of the records required to be kept by paragraph 40.

44. Franklin must send all reports required by this Order to:

Attention: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

General Provisions

45. This Order does not affect Franklin's responsibility to comply with other federal, state, and local laws.

46. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

47. Failure to comply with this Order may subject Franklin to penalties of up to \$99,681 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

48. The terms of this Order are binding on Franklin, its assignees and successors. Franklin must give notice of this Order to any successors in interest prior to transferring

ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

49. Franklin may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Franklin fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

50. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic recordkeeping efforts, please furnish an electronic copy on physical media such as compact disk, flash drive or other similar item. If it is not possible to submit the information electronically, submit the response to this Order without staples; paper clips and binder clips, however, are acceptable.

51. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

52. Franklin agrees to the terms of this Order. Franklin waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

53. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. This Order will terminate two years from the effective date, provided that Franklin has complied with all terms of the Order throughout its duration.

Franklin Iron & Metal Corp.

10-28-2019
Date

Delva Edelman
[Person's Name, Title] President
Franklin Iron & Metal Corp.

United States Environmental Protection Agency

11/15/2019
Date

Michael D. Harris

Michael D. Harris

Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 5



RECOVERY STATEMENT - APPLIANCES AND/OR VEHICLES PREVIOUSLY CONTAINING FREON/ODSs

In accordance with Section 608 of the Clean Air Act, the knowing release of refrigerant, commonly known as "Freon" and other similar ozone-depleting substances (ODS) to the atmosphere is prohibited. ODS's are chemicals used in motor vehicle air conditioners and home/commercial appliances. Franklin Iron & Metal (FI&M), in our ongoing effort to ensure compliance with applicable rules, must therefore secure appropriate statements regarding appropriate recovery of refrigerants from appliances and vehicle we receive for recycling.

RECOVERY STATEMENT

By my signature below I hereby state that refrigerant formerly contained in this appliance or vehicle, has been recovered in accordance with applicable Rules.

NAME: _____

ADDRESS: _____

CITY: _____

STATE: _____

DATE OF REFRIGERANT RECOVERY: _____

NAME OF REFRIGERANT RECOVERY ENTITY: _____

SIGNATURE

DATE



CONTRACT FOR DISPOSAL OF APPLIANCES AND/OR VEHICLES PREVIOUSLY CONTAINING FREON/ODS

In accordance with Section 608 of the Clean Air Act, the knowing release to atmosphere of refrigerant, commonly known as "Freon" and other similar ozone-depleting substances (ODS) and substitute refrigerants, is prohibited. ODS and substitutes are chemicals used in motor vehicle air conditioners and home/commercial appliances. Franklin Iron & Metal (FI&M), in our ongoing effort to ensure compliance with applicable Rules, must secure appropriate contracts and statements regarding shipments of these materials to our facilities.

By entering into this Contract the undersigned does hereby state that it will recover any remaining refrigerant from appliances and/or vehicles in accordance with 40 C.F.R. § 82.155 (a) prior to delivery to FI&M, or will verify that providers of such items to them certify through appropriate "Statements of Recovery" that the refrigerant, such as Freon and its substitutes, had been properly recovered from such items in accordance with applicable Rules prior to receipt.

NAME: _____

ADDRESS: _____

CITY: _____

STATE: _____

SIGNATURE OF COMPANY OFFICIAL

NAME OF COMPANY OFFICIAL

DATE

CERTIFICATE OF MAILING

I certify that I sent the Administrative Consent Order, EPA-5-20-113(a)-COE-02, by certified mail, return receipt requested, to:

Gregory M. Clouse
Vice President/General Manager
Franklin Iron and Metal Corp.
1939 East First Street
Dayton, Ohio 45403

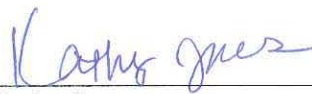
I also certify that I sent a copy of the Administrative Consent Order, EPA-5-20-113(a)-COE-02, by E- mail to:

Bob Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
bob.hodanbosi@epa.ohio.gov

and

James Kavalec, Environmental Manager
Division of Air Pollution Control
Ohio Environmental Protection Agency
james.kavalec@epa.ohio.gov

On the 19th day of November 2019.



Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT
NUMBER:

7019 0140 0000 6722 3147