Recycling and Emission Reduction Regulation Enforcement/Clean Air Act: United States Department of Justice and National Grocery Chain Enter into Consent Decree



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The United States Department of Justice ("DOJ") and the Kroger Co. ("Kroger") entered into an April 29th Consent Decree ("CD") in the United States District Court for the Southern District of Ohio addressing alleged violations of Section 608 of the Clean Air Act.

Kroger operates a national grocery chain.

The CD states that the DOJ on behalf of the United States Environmental Protection Agency ("EPA") filed a Complaint in the District Court concurrently with this document alleging violations of the Recycling and Emission Reduction regulations promulgated thereunder at 40 C.F.R. Part 82, Subpart F. Kroger is alleged to have failed to comply with a leak repair and/or recordkeeping requirements of the Subpart F regulations at certain stores and manufacturing facilities identified in the Complaint.

EPA is stated to have issued certain information requests to Kroger requesting a list of all comfort cooling appliances, commercial refrigeration appliances, and industrial process refrigeration units normally containing more than 50 pounds of a Class I or Class II ozone-depleting substance at all stores or manufacturing facilities owned or operated by Kroger or any of its subsidiaries. Kroger is stated to have responded identifying 4,646 comfort cooling appliances, commercial refrigeration appliances, and industrial process refrigeration units that used refrigerants regulated under the Subpart F regulations.

Kroger also provided information regarding the addition of Class I or Class II ozone-depleting substances during a four and one half year period, the refrigerant leak rate and formula used, and retrofit or retirement plans for 120 stores and manufacturing facilities.

Pursuant to an agreement with EPA, Kroger is stated to have submitted a self-evaluation plan to conduct a comprehensive evaluation of refrigeration appliances at all grocery stores under its ownership and/or operation, including those at which the violations alleged in the Complaint occurred. The self-evaluation is stated to have identified proposed response actions for each appliance at the evaluated grocery stores that had eight or more leaks within the 24-month period from July 1, 2018, to June 30, 2020, and for which the cumulative leak rate was greater than 75% during that period

Kroger is stated to have completed each of the response actions identified in the Self-Evaluation Report.

Kroger does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The CD assesses a civil penalty of $2,500,000. Further, it requires certain actions including:

- Refrigerant Compliance Management Plan.
- Company-Wide Average ODS Leak Rate.
- Initial Response Actions.
- Transfer of Existing Commercial Refrigeration Appliances, Existing Comfort Cooling Appliances, and Existing Industrial Process Refrigeration Units and Conversion to Advanced Refrigerants.
- New Commercial Refrigeration Appliances, New Industrial Process Refrigeration Units, Major Remodels, and Additional Upgrades.
- Reporting Requirements.

A copy of the CD which includes a list of affected facilities can be found here.