



November 9, 2009

Office of Management and Budget  
Eisenhower Executive Office Building  
725 17th Street, NW  
Washington, District of Columbia 20503  
United States of America

To Whom It May Concern:

**Preamble:**

Refrigerant 22 is a HCFC (hydro chlorofluorocarbon) which destroys the ozone.

Under the terms of the 1987 Montreal Protocol, the United States has met its obligation to phase out HCFC's.

In 2004 HCFC's in the US were reduced by 35%.

In 2010 another major milestone to reduce HCFC's by 75% is scheduled.

**Brief History:**

On or about 1988, our leaders established the exit plan for the most significant Ozone Depleting Refrigerant, otherwise known as CFC's (chlorofluorocarbons). They had the foresight to recognize refrigerant reclamation as playing a major part of their success exit strategy. In order to create an even playing field for reclaimers to compete with virgin gas allocations, an IRS excise tax was established on virgin gas. As documented in both the 608 and 609 regulations.

Even with the excise tax, the CFC 12 product soared in price from \$1.00 per pound to over \$25.00 per pound. This higher pricing fortified the reclamation business and made the capturing of CFC's economically feasible. The EPA was pleased with their accomplishment.

As we approach 2010 we find that the EPA and IRS stay out of each others business. EPA says an excise tax is the IRS's business, and the IRS removed the Ozone Depleting Chemical (ODC) tax for HCFC's from section 4681 and 4682 of the Internal Revenue Code. A quick search of HR1112 in 1989 will reveal that HCFC 22 and its tax rate were submitted by Sponsor California Democrat Fortney Hillman "Pete" Stark, Jr.

In 2008 an ICF International (ICF) report dated June 2008, had detailed HCFC projections with various scenarios.

The ICF report made the HVAC industry feel the HCFC allocation was just right for a healthy business model.

Then on December 23, 2008 (two days before Christmas) the EPA announced two proposed rules, one on the allocation of HCFC and the other relating to refrigerant equipment and their manufacturers. These rules affectively altered the model that ICF used to forecast their HCFC allocation.

The equipment manufacturers were perplexed at best yet panicked as their assembly lines and plans were interrupted by these proposed regulations. The proposed equipment rule was shocking as it alluded to the fact that equipment manufactured for HCFC's may be deemed illegal in 2010. Prior to this proposed rule, equipment manufacturers had no obligation to cease their production until 2020, as the Clean Air Act (CAA) Title I Part B Title VI Section CAA 605 US code 7671D (a) (3) was clear on this issue (HCFC's damage the ozone not equipment).

The HCFC allocation, under the new proposed rule, had 4 options, yet the EPA was favoring the status quo of issuing the existing allocation holders a percentage reduction to fit the Montreal Protocols requirements.

Even though the EPA softened their position on equipment regulations, this caused Heating Ventilation and Air Condition (HVAC) manufacturers to eliminate production of all HCFC equipment. The equipment manufactures sold off plenty of their unneeded HCFC gas to exacerbate a glut of HCFC's already in the supply chain.

The EPA, ICF, and major HCFC manufacturers, reported tightening supply and price increases of HCFC's and tens of thousands of business minded people prepared for the "R22 Shortage" by stockpiling.

### **Little Did They Know!**

The equipment manufacturers moved to an early phase out schedule of the HCFC equipment and the demand for HCFC's was greatly reduced. (This happened after the ICF report)

The Projections of ICF called for a little over a hundred million pounds per year of HCFC 22 to service equipment already in use. Now we believe it's been reduced much further by the reduction of equipment.

Additional HCFC supply resulting from a very successful plan of the EPA is their supermarket GreenChill Advance Refrigeration Partnership. This group represents a very large portion of HCFC consumption; however they are being encouraged to eliminate their HCFC's. This is a double hit to the demand for HCFC's, first their equipment required a fair amount of product for servicing, secondly each and every time they convert their equipment, HCFC contained in the equipment is cleaned and added to the existing glut of refrigerant.

Example: The CFC 12 in 1996 was \$25 dollars per pound, yet in the course of time, as CFC equipment is being replaced an oversupply of CFC 12 is now available. Proof of this is in the price, current price below \$10.00 a pound and dropping. The HCFC equipment is on a fast track to elimination, the net result is an unprecedented over supply of HCFC inventory with no place to go.

No value..... No responsibility

Know value.....know responsibility

Valuable gas will be sold and reused; valueless gas will pollute our air through illegal venting or in other words HCFC's that have inherent market value will fortify HCFC reclamation. HCFC's with no market value will not be reclaimed.

The ICF has not offered a report on stock piled HCFC's, many of us in the know are aware of millions upon millions of pounds of stockpiled gas. Also the ICF report lists the amount of equipment to be in service in 2010 and beyond (this report was generated before the new equipment rule). From this list of equipment one could approximate the amount of HCFC's in this equipment be in the neighborhood of a billion pounds.

Current conditions like the economy and a cooler than normal 2009 and of course the supply glut, dropped the price of HCFC 22 to under \$3.00 per pound (summer and fall of 2009).

EPA allegedly proposed allocation to a select few which will give them access to source virgin HCFC 22 for under \$1.00 per pound.

Our company purchases used/dirty HCFC's for \$1.50 per pound. In addition, we have it cleaned by an EPA certified reclaimer for \$1.25 per pound. After we absorb the cost of freight, analysis, cylinders, and other miscellaneous fees it is no longer economically feasibly to meet the EPA's goals. The Clean Air Act understood the need to tax virgin gas for two good reasons:

Firstly, to encourage chemical companies and equipment manufacturers to produce environmentally better products.

Secondly, to encourage reclamation, our government missed this and it seems no one will step up and fix it.

**Three suggestions to fix the problem:**

**Suggestion One:** The EPA has an auction option in which HCFC allocation would be purchased, thus increasing the virgin gas price. This option is hidden in the Federal Register, but a keen search can unveil it.

**Suggestion Two:** Our recommended suggestion is to give the allocation to whomever the EPA chooses, just charge a per pound fee (\$3.00 to \$7.00 per pound)

-EPA has a dilemma with receiving monies. (FYI)

-EPA says it's difficult to collect; we respectfully disagree, because the allocation holders are well known and could be put on the honor system, if they produce or import, they pay the fee. If there is a glut they will not produce, if there is a shortage they will produce. The EPA certified reclaimers and companies like my own will be able to survive and provide an undisputed service needed for the environment.

**Suggestion Three:** Do nothing unless or until the market price of R22 is stable above \$8.00 per pound. Why would you produce any more of an ozone depleting product when a glut scenario is looming?

Who will be responsible for a wise decision?

Sincerely,

Theodore J Broudy  
President  
USA Refrigerants

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