

## Refrigerant Violations at Supermarket Chain Result in \$4.7 Million Clean Air Act Settlement

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September 15, 2013

One of the nation's largest food and drug retailers, Safeway, Inc., has agreed to a \$4.7 million settlement associated with violations of the Clean Air Act's commercial refrigerant and repair rules. **The settlement** involves a \$600,000 civil penalty and a corporate-wide compliance plan, covering 659 stores nationwide, estimated at \$4.1 million.

EPA's stratospheric ozone protection requirements at **40 CFR Part 82** regulate refrigeration equipment used in the retail food and cold storage warehouse sectors including the appliances in grocery stores and supermarkets. In particular, commercial refrigeration units with more than 50 pounds of refrigerant that have a leak rate in excess of 35 percent must be repaired, retrofitted, or retired.

According to the **Department of Justice's** and **EPA's** press releases: "The settlement resolves allegations that Safeway violated the federal CAA by failing to promptly repair leaks of HCFC-22, a hydro-chlorofluorocarbon that is a greenhouse gas and ozone-depleting substance used as a coolant in refrigerators, and failed to keep adequate records of the servicing of its refrigeration equipment. Safeway will now implement a corporate refrigerant compliance management system to comply with stratospheric ozone regulations. In addition, Safeway will reduce its corporate-wide average leak rate from 25 percent in 2012 to 18 percent or below in 2015. The company will also reduce the aggregate refrigerant emissions at its highest-emission stores by 10 percent each year for three years."

The September 4, 2013, settlement is currently subject to a **30-day notice and comment period that began on September 11, 2013.**

Environmental regulators have increased their focus on retail, warehousing, consumer products, and related businesses. In addition to refrigerant and cooling system leaks, these businesses may have a number of environmental, health, and safety issues, such as the proper handling of household and consumer chemical products that may be hazardous waste upon discard, particularly returned, damaged, off-spec, and obsolete products, along with the proper management of used oil/fluids and batteries from forklifts, spent fluorescent bulbs, and stormwater and wastewater discharges to sanitary sewers. In May 2013, for example, Wal-Mart resolved violations associated with improper disposal of hazardous materials and pesticides at its retail stores that resulted in **\$82 million in criminal and civil penalties under RCRA, FIFRA, and the Clean Water Act.**

The regulatory focus on these operations is part of a larger national focus on warehousing and consumer and retail products enforcement that members of Spencer Fane's Environmental Practice Group presented as part of a national webinar entitled "EPA's Warehouse and Consumer Products Enforcement Initiative." **An audio recording of the presentation and copies of the handouts may be downloaded here.**

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