HCFC Importers and Producers (see attached list)

Re: Extension of No Action Assurance Regarding the Production and Import of HCFCs

Dear Sir/Madam:

Today, the EPA is revising and extending the no action assurance (No Action Assurance) issued on January 20, 2012 (attached), to the attached list of producers and importers of HCFC-22 and HCFC-142b – two types of hydrochlorofluorocarbons (HCFCs) regulated under 40 C.F.R. Part 82. This revised and extended No Action Assurance is being issued in response to a request set forth in the memorandum to me dated December 20, 2012, from Assistant Administrator for Air and Radiation Gina McCarthy (McCarthy Memorandum). As explained more fully below, this No Action Assurance establishes that the EPA will exercise its enforcement discretion not to pursue enforcement for violations of the prohibitions at 40 C.F.R. § 82.15 on consumption, production and importation of HCFC-22 and HCFC-142b without allowances if producers and importers do not exceed the amounts specified below.

EPA’s regulations at 40 C.F.R. Part 82 prohibit the production and importation of HCFCs without possessing an allowance allocated by EPA for each kilogram of HCFC. The allowances allocated for the time period between 2004 and 2009 were established by the EPA in a 2003 rule (68 Fed. Reg. 2819), and the allowances allocated for the 2010-2014 period were set forth in a subsequent rule promulgated in December 2009 (the 2009 Rule). Each year, EPA also issues a letter to the producers and importers notifying them of their respective annual allocation of allowances based on these regulations.

Aspects of the 2009 Rule that relate to the allocations of HCFC-22 and HCFC-142b allowances for the 2010-2014 time period were challenged in the D.C. Circuit. On August 27, 2010, the Court issued a decision vacating the 2009 Rule in part. The other aspects of the 2009 Rule, including allocations of HCFC-123, HCFC-124, HCFC-225ca and HCFC-225cb allowances, were not challenged, and are not affected by this No Action Assurance.

On January 4, 2012, the EPA published a proposed rule to address the Court’s vacatur of the 2009 Rule (77 Fed. Reg. 237) and to allocate calendar-year allowances for production and consumption. This rule is not yet final. The percentages listed in the proposed regulatory text, Section 82.16(a)(1), provided the following allowance amounts for 2012:

- A company with an HCFC-142b baseline would be allowed to produce or consume up to 4.9% of its baseline allowances listed at 40 CFR 82.17 and 82.19;
- A company with an HCFC-22 baseline would be allowed to produce or consume up to 17.7% of its baseline allowances listed at 40 CFR 82.17 and 82.19.
For calendar year 2013, the proposed regulation identifies options for calculation of the amounts of allowances. The McCarthy Memorandum identifies the lowest amount of allowances a company would receive under any of the options identified in the proposed regulation. Those minimum amounts are as follows:

- **HCFC-22 Production**: Excluding Arkema, a company with an HCFC-22 production baseline would be allowed to produce up to 11.9% of its baseline allowances listed at 40 CFR 82.17; Arkema would be allowed to produce up to 14.7% of its baseline allowances listed at 82.17;

- **HCFC-22 Consumption**: Excluding Arkema and Solvay Fluorides, a company with an HCFC-22 consumption baseline would be allowed to consume up to 11.4% of its baseline allowances listed at 40 CFR 82.19; Arkema and Solvay Fluorides would be allowed to consume up to 14.7% of their baseline allowances listed at 82.19;

- **HCFC-142b Production**: Excluding Arkema, a company with an HCFC-142b production baseline would be allowed to produce up to 4.9% of its baseline allowances listed at 40 CFR 82.17; Arkema would be allowed to produce 0% of its baseline allowances listed at 82.17;

- **HCFC-142b Consumption**: Excluding Arkema and Solvay Solexis, a company with an HCFC-142b consumption baseline would be allowed to consume up to 4.9% of its baseline allowances listed at 40 CFR 82.19; Arkema and Solvay Solexis would be allowed to consume up to 0.4% of their baseline allowances listed at 82.19.

Only consumption, production and importation of HCFC-22 and HCFC-142b in amounts less than or equal to the amounts set forth above will be treated as included within the scope of this No Action Assurance.

This exercise of discretion is subject to the following conditions:

- Companies must continue to comply with recordkeeping and reporting requirements at 40 C.F.R. § 82.24, including quarterly production and import reports.

- Any HCFCs produced or imported in 2012 or 2013 pursuant to this No Action Assurance shall still count towards the company’s 2012 or 2013 allocation and shall require the expenditure of allowances for the relevant control period.

- This exercise of discretion terminates 11:59 P.M., EST, December 31, 2013 or on the effective date of the EPA final rule governing HCFC allowances for calendar years 2012 and 2013, whichever occurs earlier.

- The EPA reserves the right to revoke or modify this No Action Assurance.

The issuance of a No Action Assurance for this period of time is in the public interest as it will prevent disruptions in the supply of HCFCs for refrigeration purposes. I believe this action will not increase environmental harm, as no additional allowances are or will be allocated based on this action.

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1 This minimum amounts are calculated based upon the use of recoupment options 3 and 4 discussed in the proposed rule. Those options are more fully discussed in the Recoupment Options Memorandum included in the docket for the pending rulemaking (EPA-HQ-OAR-2011-0354-0006).
If you have any further questions regarding this matter, please contact Charlie Garlow of my staff at (202) 564-1088 or garlow.charlie@epa.gov.

Sincerely,

Cynthia Giles,
Assistant Administrator

Enclosure

Cc:  Gina McCarthy
     Sarah Dunham
     Drusilla Hufford
Producers and Importers of HCFC-22 and HCFC-142b
Companies with baseline allowances at 40 CFR §§82.17 and 82.19

ABCO Refrigeration Supply
Altair Partners
Arkema
Carrier Corporation
Coolgas Investment Property
DuPont
H.G. Refrigeration Supply
Honeywell
Mexichem Fluor Inc
Kivlan & Company
MDA Manufacturing
Mondy Global
National Refrigerants
Refricenter of Miami
Refricentro
R-Lines
Saez Distributors
Solvay Fluorides
Solvay Sollexis
USA Refrigerants
HCFC Importers and Producers (see enclosed list)

Re: No Action Assurance Regarding the Production and Import of HCFCs in 2012

Dear Sir/Madam:

Today, the EPA is providing a no action assurance (No Action Assurance) to the attached list of producers and/or importers of HCFC-22 and/or HCFC-142b – two types of hydrochlorofluorocarbons (HCFCs) regulated under 40 C.F.R. §§ 82.17 and 82.19. This No Action Assurance is being issued in response to a request set forth in the memorandum to me dated December 21, 2011, from Assistant Administrator for Air and Radiation Gina McCarthy. As explained more fully below, this No Action Assurance establishes that the EPA will exercise its enforcement discretion to not pursue enforcement for violations of the prohibition at 40 C.F.R. § 82.15 on consumption, production and import without allowances if producers and importers do not exceed the amount listed in the proposed regulatory text of section 82.16(a)(1), 77 Fed. Reg. 237, 251 (January 4, 2012). The percentages listed in the proposed regulatory text in section 82.16(a)(1) would provide the following allowance amounts in 2012:

- A company with an HCFC-142b baseline would be allowed to produce or consume up to 4.9% of its baseline allowances listed at 40 CFR 82.17 and 82.19;
- A company with an HCFC-22 baseline would be allowed to produce or consume up to 17.7% of its baseline allowances listed at 40 CFR 82.17 and 82.19.

EPA’s regulations at 40 C.F.R. Part 82 prohibit the production or importation of HCFCs without possessing an allowance allocated by EPA for each kilogram of HCFC. The allowances allocated for the time period between 2004 and 2009 were established by EPA in a 2003 rule (68 Fed. Reg. 2819), and the allowances allocated for the 2010-2014 period were set forth in a subsequent rule promulgated in December 2009 (the 2009 Rule). Each year, EPA also issues a letter to the producers and importers notifying them of their respective annual allocation of allowances based on these regulations.

Aspects of the 2009 Rule that relate to the allocations of HCFC-22 and HCFC-142b allowances for the 2010-2014 time period were challenged in the D.C. Circuit. On August 27, 2010, the Court issued a decision vacating the 2009 Rule in part. The other aspects of the 2009 Rule, including allocations of HCFC-123, HCFC-124, HCFC-225ca and HCFC-225cb allowances, were not challenged, and are not affected by this NAA.

On January 4, 2012, the EPA published a proposed rule to address the Court’s vacatur of the 2009 Rule (77 Fed. Reg. 237) and to establish calendar year allowances for production and consumption. This rule is not final and the EPA will be taking comment before issuing a final rule.
This No Action Assurance establishes that the EPA will exercise its discretion not to pursue enforcement for violations of 40 C.F.R § 82.15 provided that production or importation of these HCFCs is conducted in accordance with the methodology described above.

The No Action Assurance is to remain in effect until either (1) 11:59 P.M. EST, December 31, 2012, or (2) the effective date of the final rule governing HCFC calendar year allowances for 2012, whichever occurs earlier.

This exercise of discretion is subject to the following conditions:

- Companies must continue to comply with recordkeeping and reporting requirements at 40 C.F.R. § 82.24, including quarterly production and import reports.

- Any HCFCs produced or imported in 2012 pursuant to this No Action Assurance shall count towards the company's 2012 allocation and shall require the expenditure of allowances for 2012.

- This exercise of discretion terminates 11:59 P.M., EST, December 31, 2012 or on the effective date of the EPA rule governing HCFC allowances for calendar year 2012, whichever occurs earlier.

- The EPA reserves the right to revoke or modify this No Action Assurance.

The issuance of a No Action Assurance for this period of time is in the public interest as it will prevent disruptions in the supply of HCFCs for refrigeration purposes. I believe this action will not increase environmental harm, as no additional allowances are or will be allocated based on this action.

If you have any further questions regarding this matter, please contact Charlie Garlow of my staff at (202) 564-1088 or garlow.charlie@epa.gov.

Sincerely,

[Signature]

Cynthia Giles

Enclosures

Cc: Gina McCarthy
    Sarah Dunham
    Drusilla Hufford
    David Donaldson