

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
)
)
 Plaintiff,)
)
 v.)
) CIVIL ACTION NO.
)
 AIR LIQUIDE AMERICA)
 CORPORATION)
)
 Defendant.)
)
 _____)

CONSENT DECREE

I. BACKGROUND

A. Plaintiff, the United States of America (“Plaintiff” or the “United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint pursuant to Section 113(b) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(b), for civil penalties and injunctive relief against Defendant, Air Liquide America Corporation (“Air Liquide” or “Defendant”) for alleged violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.150 - 82.166, promulgated pursuant to Subchapter VI of the CAA, 42 U.S.C. §§ 7671 - 7671q.

B. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q (“National Recycling and Emission Reduction Program”), implements the Montreal Protocol on Substances that Deplete the Ozone Layer,

and mandates the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as class I and class II substances. Section 608(a)(3) of the CAA, 42 U.S.C. § 7671g(a)(3), required EPA to promulgate regulations to reduce the use and emission of such substances to their “lowest achievable level” and “maximize the recapture and recycling of such substances.” EPA promulgated such regulations which are codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712;

C. Defendant Air Liquide is a corporation incorporated under the laws of the State of Delaware. Air Liquide manufactures industrial and medical gases including cryogenic oxygen and nitrogen, carbon dioxide, argon, acetylene, hydrogen, and helium at numerous facilities throughout the United States.

D. Air Liquide is, or at all times relevant to this matter was, the owner and operator of the 22 facilities listed on Appendix A (the “22-Facilities”) having one or more industrial process refrigeration units normally containing 50 or more pounds of class II substances as defined by Section 602 of the CAA, 42 U.S.C. § 7671, and 40 C.F.R. § 82.104.

E. The United States contends that Air Liquide violated the Subpart F Regulations at the 22-Facilities by, inter alia, failing to: (i) timely repair industrial process refrigeration equipment venting class II substances at an annualized leak rate greater than 35%; (ii) conduct “initial verification tests” and “follow-up verification tests” to ensure attempted repairs were successful; (iii) notify EPA of failed repair efforts; (iv) prepare a written plan to retrofit or retire excessively leaking equipment; (v) complete the retrofit or retirement of leaking equipment; (vi) certify the proper use of, and properly use, “certified

refrigerant recovery or recycling equipment” to evacuate class II substances during the maintenance, servicing, or repair of industrial process refrigeration equipment; and/or (vii) comply with record-keeping and reporting requirements regarding such matters as the dates and types of service or repairs to industrial process refrigeration equipment, the amount of refrigerant added, leak rates, methods used to determine leak rates; location and extent of leaks, etc. In addition, the United States contends that at one or more of the 22-Facilities Air Liquide used employees to maintain, service, or repair commercial refrigeration equipment not certified by an EPA-approved technician certification program, and/or Air Liquide failed to keep a copy of the technician’s certificate at his/her place of employment.

F. By entering into this Consent Decree Air Liquide does not admit the violations alleged in the Complaint or the allegations of the United States as set forth above, and denies having violated the Act;

G. The United States and Air Liquide have agreed that settlement of this action is in the best interest of the parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter. The United States and Air Liquide consent to the entry of this Consent Decree without the trial of any issues.

NOW THEREFORE, without the admission of fact or law, and without the admission of the violations alleged in the Complaint, it is hereby ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. The Complaint states a claim upon which relief can be granted against Air Liquide under Section 113 of the Act, 42 U.S.C. § 7413. This Court has jurisdiction over this action and the parties hereto pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1345. Venue is

proper in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b).

III. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the United States, Air Liquide, and Air Liquide's officers, employees, agents, successors, and assigns.

IV. PURPOSE

3. The purposes of this Consent Decree are to: (a) further the goals of Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q, and EPA's Subpart F Regulations by reducing or eliminating the emissions of substances known to or suspected of destroying the stratospheric ozone layer; and (b) resolve Defendant's liability for civil penalties and injunctive relief for all violations alleged in the United States' Complaint at the 22-Facilities, which are generally described in Paragraph I.E. above.

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q, or EPA's Subpart F Regulations, shall have the meaning assigned to them in Subchapter VI of the CAA or EPA's Subpart F Regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Air Liquide" or "Defendant" means the Defendant Air Liquide America Corporation and any of its successors or assigns.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any of its regions, successor departments, agencies or instrumentalities of the United States.

e. "Industrial Process Refrigeration System(s)" shall mean any appliances containing fifty (50) or more pounds of class I or class II substances as defined by Section 602 of the CAA, 42 U.S.C. § 7671, and 40 C.F.R. § 82.104 which are directly linked to a cryogenic or other process used by Air Liquide to manufacture industrial or medical gases including but not limited to oxygen, nitrogen, carbon dioxide, argon, acetylene, hydrogen, and helium.

f. "Mothball[ed][ing]" shall mean the intentional shutting down of Industrial Process Refrigeration System for an extended period of time and where a class I or class II substance has been evacuated from the appliance to at least atmospheric pressure.

g. "Non-Ozone Depleting Refrigerant" shall mean any refrigerant which is not regulated under Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q, or EPA's Subpart F Regulations, as a class I or a class II known or suspected ozone-depleting substance, with such regulatory classification determined as of the date an Industrial Process Refrigeration System is converted to use a "Non-Ozone Depleting Refrigerant" pursuant to the terms of this Consent Decree.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and Air Liquide.

- j. "Plaintiff" shall mean the United States of America.
- k. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- l. "22-Facilities" shall mean those facilities listed on Appendix A to this Consent Decree.
- m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. COMPLIANCE AND ALTERNATIVE INJUNCTIVE RELIEF

5. Air Liquide shall replace each of the Industrial Process Refrigeration Systems listed on Appendix B with a new system using a Non-Ozone Depleting Refrigerant, by no later than December 31, 2003. Within thirty (30) Days after completing the replacement of each Industrial Process Refrigeration System listed in Appendix B, Air Liquide shall submit to EPA Headquarters and the EPA Regional Office within which such facility is located, at the addresses specified in Paragraph 45, a verified report stating that the replacement has been completed, a description of the new equipment, and identify the type of refrigerant used in the new system.

6. Air Liquide shall either replace or convert each of the Industrial Process Refrigeration Systems listed in Appendix C to a system using a Non-Ozone Depleting Refrigerant. In lieu of completing such replacement or conversion, Air Liquide may either permanently shut down or Mothball any of these Industrial Process Refrigeration Systems. In the event Air Liquide elects to Mothball any of these Industrial Process Refrigeration Systems, Air Liquide shall complete the replacement or conversion of the Mothballed system to one using a Non-Ozone Depleting Refrigerant before bringing it back on line. The replacement, conversion, permanent shut-down, or Mothballing of each of these Industrial Process Refrigeration Systems shall be completed by no later than December 31 of the year

listed on Appendix C for completing such work. Within thirty (30) Days after completing the replacement, conversion, permanent shut-down, or Mothballing of each Industrial Process Refrigeration System listed on Appendix C, Air Liquide shall submit to EPA Headquarters at the address specified in Paragraph 45, a verified report stating what action was taken, a description of any new refrigeration equipment/chiller, or components thereof, if any, which were replaced or modified, identify the type of refrigerant used in the new system, and if the system was Mothballed, certify that the system will not be brought back on-line until after it has been replaced or modified to one using a Non-Ozone Depleting Refrigerant.

VII. CIVIL PENALTY

7. No later than thirty (30) Days after the effective date of this Consent Decree, Air Liquide shall pay to the United States a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. 7413, in the amount of \$4,500,000 (the “Civil Penalty”) by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing U.S.A.O. File Number 01V00656 and DOJ case number 90-5-2-1-07132. Payment shall be made in accordance with instructions provided by the U.S. Attorneys Office in the Southern District of Texas. The costs of such EFT shall be paid by the Air Liquide. Any funds received after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Air Liquide shall provide notice of payment, referencing the U.S.A.O. File Number 01V00656 and DOJ Case Number 90-5-2-1-07132, and the civil action case name and number, to the United States in accordance with Paragraph 45.

8. No amount of the Civil Penalty shall be used to reduce Air Liquide’s federal or state tax obligations.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

9. As a Supplemental Environmental Project (“SEP”), which the parties agree is intended to secure significant environmental or public health protection and improvements, Air Liquide hereby agrees to preserve and protect the ecological value, as described in a Natural Resources and Wetland Assessment Report, Appendix D to this Consent Decree, of approximately 35 acres of undeveloped land owned by Air Liquide and located between Interstate 10 and Swisco Road near Sulphur, Louisiana, described with more particularity in Appendix E to this Consent Decree (the “35-Acre Parcel”). There shall be no commercial, industrial, or residential uses of the 35-Acre Parcel, and future uses of the 35-Acre Parcel shall be consistent with Section D.4. (“Environmental Restoration and Protection”) of the EPA Supplemental Environmental Projects Policy (May 1, 1998). Allowable future improvements to the 35-Acre Parcel associated with recreational uses may include, by way of example only, nature or hiking trails, bicycle trails, jogging paths, exercise stations, picnic areas, or playgrounds, provided that the creation or maintenance of such recreational improvements shall be incidental to, and not fundamentally alter, the environmentally beneficial uses of the 35-Acre Parcel. Hunting, discharging of firearms, the operation of motorized vehicles, or other similar activities which would be inconsistent with the natural ecological setting and values of the 35-Acre Parcel shall be prohibited.

10. Within fifteen (15) Days after the effective date of this Consent Decree, Air Liquide shall record a certified copy of this Consent Decree in the public records of the Mortgage and Conveyance Office of Calcasieu Parish, Louisiana. Thereafter each deed, title, or other instrument conveying an interest in any portion of the 35-Acre Parcel shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of this Consent Decree. Within ninety

(90) Days after a certified copy of this Consent Decree has been recorded in the public records of the Mortgage and Conveyance Office of Calcasieu Parish, Louisiana, Air Liquide shall convey the 35-Acre Parcel in fee, without any mortgages, liens, or similar financial encumbrance, to the Sulphur Parks Commission to be used for those purposes, and subject to those limitations upon the use of the 35-Acre Parcel, as described in Paragraph 9. Air Liquide will provide written representations and warranties to the Sulphur Parks Commission that there is no known existing environmental contamination on the 35-Acre Parcel, and that should the Sulphur Parks Commission discover hazardous substances, pollutants, or contaminants on the 35-Acre Parcel which were present on the 35-Acre Parcel as of the date Air Liquide conveys it to the Sulphur Parks Commission and which must be removed, contained, treated, or remediated to comply with the Louisiana Environmental Quality Act or its federal counterparts, Air Liquide will undertake such actions to comply with the Louisiana Environmental Quality Act or its federal counterparts and make reasonable efforts to obtain a written statement from the Louisiana Department of Environmental Quality, or as applicable EPA, that no further actions are necessary to address such environmental contamination.

11. Based upon a recent appraisal, the 35-Acre Parcel has a current fair market value of \$422,000. Air Liquide hereby certifies that as of the date of this Consent Decree, Air Liquide is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Air Liquide required to perform the SEP by any other agreement, grant, or injunctive relief in this case or in any other case. Air Liquide further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP, nor will Air Liquide receive any financial consideration for conveying the 35-Acre Parcel to the Sulphur Parks Commission.

12. Air Liquide shall submit a SEP Completion Report to the United States, EPA Headquarters, and EPA Region 6 at the addresses specified in Paragraph 45, by December 31, 2001.

- a. The report shall contain the following information or documents:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any problems encountered and solutions thereto;
 - iii. Copies of the deed conveying title to the 35-Acre Parcel;
 - iv. Copies of the representations and warranties between Air Liquide and the Sulphur Parks Commission; and
 - v. A certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.
- b. The report shall be verified in accordance with Paragraph 44.

13. Defendant agrees that EPA may have access to all information related to the SEP in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

Defendant shall maintain legible copies of documentation of the underlying research and data for the SEP Completion Report submitted to EPA pursuant to this Consent Decree, and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information.

14. Within forty-five (45) Days after receipt of the SEP Completion Report described in Paragraph 12 above, EPA will notify the Defendant in writing regarding: (1) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) Days for Defendant to correct any deficiencies; or (2) indicate that EPA concludes that the project has been completed.

15. If EPA elects to exercise option (1) in Paragraph 14 above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the SEP completion itself, EPA shall permit Defendant the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) Days of receipt of such notification. EPA and Defendant shall have an additional thirty (30) Days from the receipt by EPA of the notification of the objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty-day period, EPA shall provide a written statement of its decision on adequacy of the SEP Completion Report to Defendant.

16. If, after the steps outlined in Paragraph 15 above have been taken, either the SEP Completion Report or the SEP itself has not been completed as contemplated herein and as determined by EPA, stipulated penalties shall accrue in accordance with Section XI below from the date of the Defendant's receipt of EPA's written decision that the SEP Completion Report or the SEP itself has not been completed. Any decision by EPA under this paragraph shall be subject to the Dispute Resolution provisions in Section XIV. If Defendant initiates the Dispute Resolution procedures, Defendant shall not owe and shall not be obligated to pay the stipulated penalties until thirty (30) Days after the Court rules in the United States' favor.

17. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act, 42 U.S.C. § 7413(b)."

18. No amount of the cost to Air Liquide of the SEP shall be used to reduce Air Liquide's federal or state tax obligations.

IX. ADDITIONAL RELIEF

19. Within ninety (90) Days after the effective date of this Consent Decree, Air Liquide shall convey in fee, and without any mortgage, lien, or similar financial encumbrance, approximately two acres of undeveloped land located approximately 300 feet west of State Highway 27 in Westlake, Louisiana, to the Carlyss Fire Protection District (the "Fire Station Parcel"), described with more particularity in Appendix F to this Consent Decree. Based upon a recent appraisal, the Fire Station Parcel has a current fair market value of at least \$24,000. By a separate written agreement between Air Liquide and the Carlyss Fire Protection District, the Carlyss Fire Protection District will covenant that it will use the Fire Station Parcel as the site for a new two-bay fire and emergency response station. Air Liquide will provide reasonable assurances to the Carlyss Volunteer Fire Department in such separate written agreement that the Fire Station Parcel has no known existing environmental contamination on it, and that should the Carlyss Volunteer Fire Department discover hazardous substances, pollutants, or contaminants on the Fire Station Parcel which were present on the Fire Station Parcel as of the date Air Liquide conveys it to the Carlyss Volunteer Fire Department and which must be removed, contained, treated, or remediated to comply with the Louisiana Environmental Quality Act or its federal counterparts, Air Liquide will undertake such actions to comply with the Louisiana Environmental Quality Act or its federal counterparts and make reasonable efforts to obtain a written statement from the Louisiana Department of Environmental Quality, or as applicable EPA, that no further actions are necessary to address such environmental contamination.

20. Within ninety (90) Days after the effective date of this Consent Decree, Air Liquide shall transfer \$54,000 into a special, segregated account established and maintained by the Carlyss Fire Protection District, at the sole cost of the Carlyss Fire Protection District, to be used for the following purposes, and no others: to pay for the direct, out-of-pocket expenses of the Carlyss Fire Protection District associated with the ownership, management, or development of the Fire Station Parcel or the construction of a new two-bay fire and emergency response station upon the Fire Station Parcel.

21. Within thirty (30) Days after the conveyance of the Fire Station Parcel to the Carlyss Fire Protection District Air Liquide shall submit an copies of the following documents to the United States, EPA Headquarters, and EPA Region 6 at the addresses specified in Paragraph 45:

- a. the deed conveying title to the Fire Station Parcel;
- b. the check and transmittal of \$54,000 to the Carlyss Fire Protection District; and
- c. the agreement between Air Liquide and the Carlyss Fire Protection District.

22. This project is additional relief and is not being performed as a SEP. In addition, no amount of the cost to Air Liquide of this Additional Relief shall be used to reduce Air Liquide's federal or state tax obligations.

X. REPORTING OBLIGATIONS

23. Air Liquide shall submit to EPA Headquarters and each EPA Region in which a facility which is the subject of the report is located, at the addresses specified in Paragraph 45, the following reports or statements which shall be verified by Air Liquide in accordance with Paragraph 44, and sent to EPA by no later than April 1 and October 1 of each year that this Consent Decree is in effect:

- a. A status report regarding all work required under Paragraphs 5, 6, 9, and 19; and

b. A copy of the completed “Refrigerant Fill Record” form (a sample of which is attached as Appendix G) and an affirmative statement regarding Air Liquide’s compliance or noncompliance with EPA’s Subpart F regulations with respect to each Industrial Process Refrigeration System listed on Attachments B or C which used R-22 or any other class I or class II refrigerant during the prior six-month reporting period. After a system has been converted to use a Non-Ozone Depleting Refrigerant, or is permanently shut-down or Mothballed, Air Liquide need not submit Refrigerant Fill Records for subsequent reporting periods, but shall affirmatively state in reports to EPA whether there has been any change in the regulatory status of the system.

XI. STIPULATED PENALTIES

24. Air Liquide shall pay stipulated penalties to the United States for each failure by the Air Liquide to comply with the terms of this Consent Decree. Stipulated penalties will be calculated as follows:

a. For failure to complete the replacement of each of the seven Industrial Process Refrigeration Systems listed on Appendix B as set forth in Paragraph 5 by December 31, 2003 – \$1,000 per day per system until the replacement is completed;

b. For failure to replace, convert, permanently shut-down, or Mothball each of the Industrial Process Refrigeration Systems listed on Appendix C by no later than December 31 of the

year listed on Appendix C for completing such work as set forth in Paragraph 6 – \$750 per day per system until the replacement, conversion, permanent shut-down, or Mothballing is completed;

c. For failure to submit any reports due under Paragraph 5 or 6 – \$500 per day per report due until submitted;

d. For failure to pay the civil penalty when due as set forth in Paragraph 7 – \$2,500 per day until paid;

e. For failure to complete the SEP as described in Paragraph 9 and 10, or to submit a SEP completion report as set forth in Paragraph 12, as determined by EPA in accordance with Paragraph 16 – \$2,000 per day per violation;

f. For failure to comply with any of the reporting obligations set forth in Paragraph 23 – \$250 per day per report until submitted; and

g. For failure to certify any report or submission in accordance with Paragraph 44 – \$250 per day per report or submission until certified.

25. Air Liquide shall pay stipulated penalties upon written demand by the United States no later than thirty (30) Days after receiving the United States’ demand. Stipulated penalties shall be paid by certified or cashier’s check(s) payable to the “Treasurer of the United States,” reference DOJ case number 90-5-2-1-07132 and U.S.A.O. file number 01V00656 and be delivered to the United States Attorney for the Southern District of Texas, at:

Department of Justice
Central Intake Facility
P.O. Box 198558
Atlanta, GA 30384

A photocopy of the check shall be mailed to the United States.

26. The payment of stipulated penalties shall not alter in any way Air Liquide's obligation to complete the performance of the activities required under this Consent Decree.

27. If Air Liquide fails to pay stipulated penalties when due the United States may institute proceedings to collect the stipulated penalties, as well as interest at the rate established by the United States Department of Treasury pursuant to 31 U.S.C. § 3717 (as of the due date) for any period after the due date.

28. The United States retains the authority, in its sole discretion, to waive or reduce stipulated penalties as the facts, circumstances, or equity may allow.

XII. RIGHT OF ENTRY

29. Any authorized representative of EPA, upon presentation of credentials, shall have a right of entry upon the premises of any of the facilities at which the Industrial Process Refrigeration Systems listed on Appendices B and C are located for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by Air Liquide as required by this Consent Decree. Air Liquide shall retain such records as are required pursuant to this Consent Decree for a period of five years following their creation.

Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414.

XIII. FORCE MAJEURE

30. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Air Liquide shall notify the United States in

writing as soon as practicable, but in any event within fourteen (14) Days of when Air Liquide first knew of the event or should have known of the event by the exercise of due diligence. Air Liquide shall specifically reference this Paragraph of this Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Air Liquide to prevent or minimize the delay and the schedule by which those measures will be implemented. Air Liquide shall adopt all necessary measures to avoid or minimize such delays.

31. With respect to any event described in Paragraph 30, Air Liquide's failure to comply with the notice requirements of this Section shall constitute a waiver of Air Liquide's rights to invoke the provisions of this Section XIII as to the particular event involved.

32. For purposes of this Consent Decree, a "force majeure" is defined as any unforeseen event that both: (a) arises from circumstances beyond the control of Air Liquide that could not have been prevented by due diligence by Air Liquide; and (b) delays or may delay the performance of a requirement of this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Air Liquide's obligations under this Consent Decree, standing alone, shall not constitute circumstances beyond Air Liquide's control, or serve as a basis for an extension of time under this Section. Air Liquide's failure to obtain a federal, state, or local permit or other approvals which are necessary to comply with a requirement of this Consent Decree may be a force majeure with respect to that requirement if Air Liquide demonstrates that: (a) Air Liquide made timely application which it in good faith believed was complete in accordance with applicable statutory and regulatory requirements; and (b) all other requirements for a force majeure as described in this Section XII have been met.

33. The United States shall notify Air Liquide in writing regarding Air Liquide's claim of a delay or impediment to performance within thirty (30) Days of receipt of the notice provided under Paragraph 30. If the United States agrees that the delay or impediment to performance has been or will be caused by circumstances beyond Air Liquide's control, including any entity controlled by Air Liquide, and that Air Liquide could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be filed as a modification to this Consent Decree pursuant to the modification procedures established in this Consent Decree. Air Liquide shall not be liable for stipulated penalties for the period of any such delay.

34. If the United States does not accept Air Liquide's claim of a delay or impediment to performance, within thirty (30) Days of receipt of the United States' determination, Air Liquide shall pay stipulated penalties consistent with Paragraphs 24 and 25, or submit the matter to this Court by filing a petition for determination with this Court. Once Air Liquide has submitted the matter to this Court, the United States shall have thirty (30) Days to file its response to Air Liquide's petition. If Air Liquide submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond Air Liquide's control, including any entity controlled by Air Liquide, and that Air Liquide could not have prevented the delay by the exercise of due diligence, Air Liquide shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances. If the Court adopts the position set forth in the United States' response, within thirty (30) Days after Air

Liquide receives the Court's order, Air Liquide shall pay stipulated penalties consistent with Paragraphs 24 and 25.

35. Air Liquide shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond the control of Air Liquide or any entity controlled by it, and that Air Liquide could not have prevented the delay by the exercise of due diligence. Air Liquide shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

XIV. DISPUTE RESOLUTION

36. The dispute resolution procedure provided by this Section XIV shall be available to resolve all disputes arising under this Consent Decree, except as otherwise provided in Section XIII regarding Force Majeure, provided that the party making such application has made a good faith attempt to resolve the matter with the other party.

37. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Consent Decree to another advising of a dispute pursuant to this Section XIV. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) Days from the receipt of such notice.

38. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond

thirty (30) Days from the date of the first meeting between representatives of the United States and Air Liquide, unless the parties' representatives agree to shorten or extend this period.

39. In the event that the Parties are unable to reach agreement during such informal negotiation period, the United States shall provide Air Liquide with a written summary of its position regarding the dispute. The position advanced by the United States shall be considered binding unless, within forty-five (45) Days of Air Liquide's receipt of the written summary of the United States position, Air Liquide files with this Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) Days of filing.

XV. EFFECT OF CONSENT DECREE

40. Air Liquide's payment of the Civil Penalty as set forth in Paragraph 7 and compliance with the requirements of Section VI shall constitute a full and complete settlement, and shall be in satisfaction of, the United States' claim for civil penalties and injunctive relief under Section 113(b) of the Act, 42 U.S. C. § 7314(b), with regard to the violations alleged in the United States' Complaint at the 22-Facilities and as described in the Paragraph I.E. of this Consent Decree, through date of the lodging of this Consent Decree.

41. This Consent Decree does not pertain to any matters except as expressly set forth herein. The United States reserves any claims for criminal liability, if any, for the matters addressed in this Consent Decree.

XVI. EFFECTIVE DATE/FINAL JUDGMENT

42. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and Air Liquide. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. The United States shall be deemed a judgment creditor for purposes of any unpaid amounts of the civil penalty and any stipulated penalties and interest.

XVII. NOTICE AND SUBMISSION OF DOCUMENTS

44. Whenever under the terms of this Consent Decree a report, statement, or other document is to be certified it shall be certified by a knowledgeable officer of the company under penalty of law that the information contained in such report, statement, or document is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

45. Whenever under the terms of this Consent Decree any notice is to be given, or a report or other document is to be forwarded, by one party to another, it shall be directed to the following addresses unless the sending party has been advised in writing by the receiving party that such notice and reports should be forwarded to a different individual or address. Notifications to or communications shall be deemed submitted on the date they are either: hand-delivered; postmarked and sent by certified mail, return receipt requested; sent by facsimile; or sent by overnight courier service. Any such materials shall include a reference to the name, caption and number of this action.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044

and

Chief, Stationary Source Enforcement Branch
Headquarters US EPA, OECA, Air Enforcement Division
Mail Code 2242A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

As to EPA Headquarters:

Chief, Stationary Source Enforcement Branch
Headquarters US EPA, OECA, Air Enforcement Division
Mail Code 2242A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

As to EPA Regions:

Region 1:

CFC Coordinator
Air Enforcement
U.S. EPA Region 1
JFK Federal Building
Boston, MA 02203-0001

Region 3:

CFC Coordinator
Air Enforcement
U.S. EPA Region 3
Wheeling Office
303 Methodist Building
11th and Chaplain Street
Wheeling, WV 26003

Region 4:

CFC Coordinator
Air Enforcement Branch
U.S. EPA Region 4 – 12th Floor
Atlanta, GA 30303

Region 5:

CFC Coordinator
U.S. EPA Region 5
61 Forsyth Street
77 W. Jackson Blvd.

Chicago, IL 60604-3507

Region 6:

CFC Coordinator
6EN-AA
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Region 8:

CFC Coordinator
U.S. EPA Region 8
999 18 Street, Suite 500
Denver, CO 80202

Region 9:

CFC Coordinator
Air-5
U.S. EPA Region 9
Hawthorne Street
San Francisco, CA 94105

Region 10:

CFC Coordinator
Idaho Operations Office
U.S. EPA Region 10
1435 N. Orchard St.
Boise, ID 83706

As to the Defendant:

Vice President of Corporate and Legal Affairs
Air Liquide America Corporation
2700 Post Oak Boulevard, Suite 1800
Houston, TX 77056

XVIII. RETENTION OF JURISDICTION/TERMINATION OF DECREE

46. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

47. This Consent Decree shall terminate after Air Liquide has fulfilled all of its obligations under this Consent Decree. To terminate this Consent Decree, Air Liquide shall submit a certification to the United States, at the addresses set forth in Paragraph 45, stating that Air Liquide has fully complied with all of the requirements of this Consent Decree. Within forty-five (45) Days after receiving such a certification the United States shall either: (a) file the certification with the Court together with a notice

that the United States does not object to the termination of the Consent Decree; or (b) notify Air Liquide in writing that the United States does not agree that Air Liquide has complied with all the requirements of this Consent Decree. If the United States objects to the termination of the Consent Decree, the Parties shall attempt to resolve the disagreement within thirty (30) Days after Air Liquide receives the notice of disagreement from the United States. If the Parties are unable to resolve the disagreement, Air Liquide may petition the Court to resolve the disagreement.

XIX. INTEGRATION/APPENDICES

48. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree and its appendices.

49. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the List of 22-Facilities;

“Appendix B” is the List of Industrial Process Refrigeration Systems to be Replaced by 2003;

“Appendix C” is the List of Industrial Process Refrigeration Systems to be Replaced, Converted, Shut-down, or Mothballed by 2005 or 2009;

“Appendix D” is the Natural Resources and Wetlands Assessment Report;

“Appendix E is the Legal Description of the 35-Acre Parcel;

“Appendix F” is the Description of the Fire Station Parcel; and

“Appendix G” is a Sample “Refrigerant Fill Record” form.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

50. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

51. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXI. SIGNATORIES/SERVICE

52. The undersigned representative of Air Liquide and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

53. Air Liquide hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Air Liquide in writing that it no longer supports entry of the Consent Decree.

54. Air Liquide shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Air Liquide with respect to all matters arising under or relating to this Consent Decree. Air Liquide hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of

Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Air Liquide need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXII. GENERAL PROVISIONS

55. Each party to this action shall bear its own costs and attorneys' fees.

56. There shall be no modification of this Consent Decree without written approval by both Parties, or by Order of the Court.

SO ORDERED THIS ___ DAY OF _____, 2001

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED enters into this Consent Decree in the matter of United States v. Air Liquide America Corporation:

FOR THE UNITED STATES:

JOHN C. CRUDEN
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Ave., N.W.
Room 2718
Washington, D.C. 20530

JEREL L. ELLINGTON
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945N
Denver, Colorado 80202
Telephone: (303) 312-7321

MERVYN M. MOSBACKER
United States Attorney
Southern District of Texas

By:

Assistant United States Attorney
P.O. Box 61129
Houston, TX 77208
Telephone: (713) 567-9000

THE UNDERSIGNED enters into this Consent Decree in the matter of United States v. Air Liquide America Corporation:

SYLVIA K. LOWRANCE
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

THE UNDERSIGNED enters into this Consent Decree in the matter of United States v. Air Liquide America Corporation:

FOR AIR LIQUIDE AMERICA CORPORATION:
