

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION No.
	)	
NEWLY WEDS FOODS, INC,	)	
	)	
	)	
Defendant.	)	
_____	)	

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), is filing a Complaint concurrently with this Consent Decree, alleging that the Defendant violated the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq., at some or all of the facilities located in located in Watertown, Massachusetts; Bethlehem, Pennsylvania; Chicago, Illinois; Gerald, Missouri; Horn Lake, Mississippi; Cleveland, Tennessee; Springdale, Arkansas and Modesto, California (the “Defendant's Facilities”).

The Complaint, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413(b), seeks injunctive relief and civil penalties for alleged violations of the refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, Sections 82.152 - 82.166, (“Recycling and Emission Reduction”), promulgated pursuant to Subchapter VI of the CAA (“Stratospheric Ozone Protection”), 42 U.S.C. §§ 7671-7671q, at Defendant’s facilities.

The United States and Defendant have agreed on terms to settle this action. By entering

into this Consent Decree, Defendant makes no admission of liability with respect to violations of the CAA. The United States and Defendant have agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action.

IT IS, ADJUDGED, ORDERED, and DECREED THAT:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

2. Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.

3. Notice of the commencement of this action has been given to the air pollution control agency for each state where Defendant's Facilities are located in accordance with 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding on both the United States and on the Defendant, its assigns, and successors.

5. At least thirty (30) Days prior to transferring ownership or operation of one or more of Defendant's Facilities to any other person, Defendant must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented, including but not limited to, ensuring that each Appliance listed on Appendices "A" and "B" is Retrofitted or Retired in accordance with Section "VIII" ("Compliance Requirements") of this Consent Decree.

6. Defendant must provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant may not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CAA or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. "Appliance" means a device as defined at 40 C.F.R. § 82.152.
- b. "Complaint" means the Complaint filed by the United States in this action.
- c. "Consent Decree" means this document and Appendices "A" and "B."
- d. "Day" means a calendar day unless expressly stated to be a business 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 will run until the close of business the next business day.
- e. "Defendant" means Newly Weds Foods, Inc., its successors and assigns.
- f. "Effective Date" means the date of entry of this Consent Decree by the Court.
- g. "EPA" means the United States Environmental Protection Agency and any successor

departments or agencies of the United States.

h. “Facility” means a discrete parcel of real property or such a parcel improved by Defendant's buildings, factory, plant, premises, or other improvement, at which Defendant operates a baking/bakery business, containing at least one IPR.

I. “Industrial Process Refrigeration Appliance” or “IPR” means any Appliance that is directly linked to the manufacturing or baking process and that contains more than fifty (50) pounds of an ODS Refrigerant.

j. “Non-Ozone Depleting Refrigerant” or “Non-ODS Refrigerant” means any refrigerant which is not regulated under Subchapter VI of the Act, 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, and is approved as a substitute by EPA under 40 C.F.R. Part 82, Subpart G, with such regulatory classification determined as of the date a ODS system is converted to use a “Non-Ozone Depleting Refrigerant.”

k. “Non-ODS System” means any cooling system that contains only a Non-ODS refrigerant or contains no ODS Refrigerant.

l. “ODS Refrigerant” means a Class I or a Class II substance as defined in 40 C.F.R. § 82.3, or a blend of Class I or Class II substances.

m. “ODS System” means any cooling system which uses ODS Refrigerant other than a Non-ODS System as defined in this Consent Decree.

n. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral;

o. “Parties” mean the United States and Defendant;

p. “Retire,” “Retirement,” “Retired,” or “Retirements” means the permanent removal of

an Appliance from service, together with the proper removal of all refrigerant from the appliance.

q. “Retrofit,” “Retrofits,” or “Retrofitted” means a designed change (i.e., conversion) of an Appliance from an ODS System to a Non-ODS System.

r. “Section” means a portion of this Consent Decree identified by a roman numeral;

s. “United States” means the United States of America, acting on behalf of EPA.

#### IV. DEFENDANT

9. The Defendant is, or at times relevant to this matter was, the owner and operator of the Defendant’s Facilities as described above.

10. Defendant is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

#### V. CIVIL PENALTY

11. Defendant must pay to the United States a civil penalty in the amount of \$125,000 in settlement of the claims for civil penalties alleged in the United States' Complaint. Payment will be made pursuant to the provisions of Paragraph 13 within thirty (30) Days the (“due date”) after the Effective Date.

12. No portion of the civil penalty paid pursuant to this Consent Decree may be used to reduce Defendant’s federal or state tax obligations.

13. The payment to the United States must be 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 2006v00596 and DOJ case number 90-5-2-1-07985. Payment shall be made in accordance with instructions provided by the U.S. Attorneys Office in the Northern District of Illinois. The costs of such EFT shall be paid by Defendant. Any funds received after

11:00 a.m. (Eastern Time) shall be credited on the next business day. Defendant shall provide notice of payment, referencing the U.S.A.O. File Number 2006v00596 and DOJ Case Number 90-5-2-1-07985, and the civil action case name and number, to the United States and EPA to the following person and to those persons for which notice must be given in accordance with Section XVII.

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

#### VI. INTEREST

14. Interest on any outstanding balance of principal will accrue at the statutory rate set forth in 28 U.S.C. § 1961 from the due date through the date of full and complete payment.

#### VII. DEFAULT

15. If Defendant does not pay in full the civil penalty required by Section V on or before the due date, Defendant will be liable to the United States for any reasonable attorney's fees, whether suit be brought or not, and all other costs and expenses actually and reasonably incurred by the United States in connection with collecting the civil penalty.

16. This Consent Decree will be considered an enforceable judgment against Defendant for purposes of post judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

## VIII. COMPLIANCE REQUIREMENTS

17. Consistent with the terms of this Consent Decree, Defendant must Retrofit or Retire all of the IPRs listed on Appendix "A" of this Consent Decree by July 1, 2007. Defendant must Retrofit or Retire all of the IPRs listed on Appendix "B" by July 1, 2008. Defendant represents that the IPRs listed on Appendices "A" and "B" constitute all of the IPRs owned and operated by Defendant in the United States. All refrigerant removed from the Retrofitted or Retired IPRs shall be either sent for destruction in accordance with the provisions of 40 C.F.R. § 82.104(h) or reclaimed as defined in 40 C.F.R. § 82.152, by a certified reclaimer as defined in 40 C.F.R. § 82.164. If Defendant Retires an IPR, it shall not use any of the Retired units (unless Retrofitted for use) and shall decommission or dismantle the Retired Units in such a way that the Retired Units cannot be reused for Refrigeration by Defendant or others. After Retirement of an IPR, if Defendant wishes to install a refrigeration unit in the place of the Retired IPR, Defendant must either: (1) replace that Retired IPR with a Non-ODS System or (2) replace that Retired IPR with a unit that has been Retrofitted. Within thirty (30) days of the effective date of this Consent Decree, or within thirty (30) days after completing the Retrofit or Retirement of an IPR listed in Appendices "A" or "B," Defendant shall submit to EPA, at the addresses specified in Section XVII, a certification stating that the Retrofit or Retirement has been completed, a description of any new equipment installed, the type of refrigerant used in the Retrofitted unit or the new unit used to replace the Retired IPR, or stating that no refrigeration unit will be used to replace a Retired IPR, and documentation showing that the refrigerant from all Retrofitted or Retired units was properly destroyed or reclaimed in accordance with this Consent Decree.

18. Defendant must complete all Retrofits and Retirements required under this Consent

Decree no later than July 1, 2007 for IPRs listed on Appendix A and no later than July 1, 2008 for IPRs listed on Appendix B. Defendant must not convert any non-ODS System to an ODS System, or acquire and use an ODS system, or begin using a mothballed ODS system to replace the functions of an ODS system Retired pursuant to this Consent Decree.

19. No IPR listed on Appendix "A" or "B" may be removed from one facility and reinstalled at another facility without first being Retrofitted prior to its reinstallation.

20. Defendant must at all times comply with the regulations set forth at 40 C.F.R. Part 82, Subpart F. For each IPR that Defendant owns or operates in the United States which has more than one independent circuit, Defendant agrees to maintain and to direct its contractors to maintain servicing records for each independent circuit which indicates the amount of refrigerant added or removed from each circuit, and that describes the service work performed for each independent circuit and the date of such service work.

21. Within thirty days after Defendant determines, or has information which demonstrates, that any IPR at any of its United States' facilities is (1) leaking such that a loss of refrigerant will exceed 35% of the total charge during a 12-month period, and (2) there have been three or more leak rate exceedances that have required service in any 12-month period after the effective date of this Consent Decree, Defendant shall Retrofit or Retire such IPR within one year from the time of the third leak rate exceedance. Each such Retrofit or Retirement shall comply with the requirements for the Retrofits and Retirements set forth in Paragraph 17 of this Consent Decree.

22. Where any compliance obligation required to be met under this Section requires a federal, state, or local permit or approval, Defendant must submit timely and complete



applications and take all other actions necessary to obtain all permits or approvals. Defendant may seek relief under the provisions of Section “XI” (“Force Majeure”) of this Consent Decree for any delay in the performance of any obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill any obligation.

#### IX. REPORTING

23. On July 30, 2007, Defendant must submit a report (“Report”) to each EPA Region set forth in Paragraph 63. The Report must be submitted on or before July 30, 2007 for the IPRs listed on Appendix “A” and on or before July 20, 2008 for the IPRs listed on Appendix “B.” The Report must contain the following:

- a. A description of the activities undertaken to comply with the requirements of Section “VIII” (“Compliance Requirements”) above;
- b. A list of Appliances that Defendant has Retrofitted or Retired to Non-ODS Systems, in accordance with Paragraph 17, above; and,
- c. A list of any Facility(ies) for which ownership or operation has been transferred in accordance with Paragraph 5, above.

24. Each Report and any other document required to be submitted pursuant to the terms of this Consent Decree must contain a certification signed by a responsible corporate officer of Defendant. The certification must read:

“I, \_\_\_\_\_, certify under penalties of law that the information contained in or accompanying this (submission/document) is true, accurate, and complete. As to the identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official with supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate, and complete.”

X. STIPULATED PENALTIES

25. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, Defendant must pay Stipulated Penalties in the amounts set forth below for each failure to comply with the requirements of this Consent Decree. “Compliance” includes payment of the civil penalty, together with any accrued interest, completion of the requirements under this Consent Decree within the specified time schedules established by and approved under this Consent Decree, as set forth in Section “VIII” (“Compliance Requirements”). “Compliance” also includes the timely reporting under Section “IX” of this Consent Decree.

26. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Sections “V,” “VI,” “VII” and “VIII” of this Consent Decree.

<u>Period of Failure to Comply</u>	<u>Penalty Per Appliance or Violation Per Day</u>
1st through 30 <sup>th</sup> day	\$250.00
31 <sup>st</sup> through 60 <sup>th</sup> day	\$500.00
61 <sup>st</sup> day and beyond	\$1,000.00

27. For violations of Sections “IX,” Stipulated Penalties will accrue at a rate of \$100 per day for the first thirty days, and \$250 per day thereafter.

28. All Stipulated Penalties must be paid within thirty Days after the United States makes a demand for payment. Stipulated Penalties are payable in accordance with the following Paragraphs.

29. The United States may, in the unreviewable exercise of its discretion, reduce

or waive Stipulated Penalties otherwise due under this Consent Decree.

30. Notwithstanding the date of any demand for Stipulated Penalties, pursuant to Paragraph 28, all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated Penalties will continue to accrue until performance is completed or until the violation ceases. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

31. Notwithstanding Paragraph 28 of this Consent Decree, Stipulated Penalties will continue to accrue as provided in accordance with Paragraphs 26 and 27 during any Dispute Resolution, with interest in accordance with Paragraph 14, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA's that is not appealed to the Court, accrued Stipulated Penalties determined to be due, together with accrued interest, must be paid to the United States within thirty Days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant must, within sixty Days after receipt of the Court's decision or order, pay all accrued Stipulated Penalties determined by the Court to be due, together with accrued interest, except as provided in Subparagraph c, below;

c. If the District Court's decision is appealed by any Party, Defendant must, within fifteen Days of receipt of the final appellate court decision, pay all accrued Stipulated Penalties determined to be owing to the United States, together with accrued interest.

32. Stipulated penalties shall be paid to the Plaintiff in the same manner set forth in

Section V (Civil Penalty) of this Consent Decree.

33. Defendant must pay interest on any balance of Stipulated Penalties not paid within the time provided in Paragraph 28. Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. If any Stipulated Penalty is not paid in full when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

34. Subject to the provisions of Section “XV” (“Effect of Settlement/Reservation of Rights,”) the Stipulated Penalties provided for in this Consent Decree are in addition to any other rights, remedies, or sanctions available to the United States by reason of Defendant's failure to comply with any requirement of this Consent Decree or applicable law, except for any violation of relevant statutory or regulatory requirements for which this Consent Decree also provides for payment of a Stipulated Penalty. In such case, the United States will elect whether it will seek Stipulated Penalties or statutory penalties for such violation.

#### XI. FORCE MAJEURE

35. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. “Best efforts” includes using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. “Force Majeure” does not include Defendant's financial inability to perform any obligation under this Consent Decree.

36. Examples of events that are not Force Majeure include, but are not limited to, unanticipated or increased costs or expenses of work, financial difficulties encountered by Defendant in performing such work, and the failure of Defendant or their representatives including contractors to make complete and timely application for any required approval or permit.

37. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of Force Majeure, Defendant must provide notice in writing, as provided in Section “XVII” (“Notices”) of this Consent Decree, within ten Days of the time Defendant first knew of, or by the exercise of due diligence should have known of, the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendant's rationale for attributing the delay to a Force Majeure event. Failure to comply with these requirements will preclude Defendant from asserting any claim for Force Majeure.

38. Defendant has the burden of proving, by a preponderance of the evidence, that an event was a Force Majeure event; that Defendant gave the notice required by the preceding Paragraph; that Defendant took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay Defendant claims was attributable to the Force Majeure event was caused by that event.

39. EPA will notify Defendant in writing of its agreement or disagreement with Defendant's claim of Force Majeure within thirty (30) Days of receipt of the notice provided

under paragraph 37. If EPA agrees that Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, EPA will notify Defendant in writing of its agreement to an extension of time for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by the event. In the event the Parties cannot agree, EPA's determination will govern unless Defendant invokes formal Dispute Resolution pursuant to Paragraph 42 of Section "XII" of this Consent Decree within fourteen Days after EPA's notification. An extension of time for performance of one or more obligations affected by a Force Majeure event will not, of itself, extend the time for performance of any other obligation.

40. Stipulated Penalties will not be due for the number of days of noncompliance determined to be caused by a Force Majeure event as defined in this Section.

## XII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedure of this Section is the exclusive mechanism to resolve all disputes arising under this Consent Decree, except as otherwise provided in Section "XI" ("Force Majeure.") The procedures set forth in this Section do not apply to actions by the United States to enforce obligations of Defendant that have not been disputed in accordance with this Section.

42. Any dispute which arises under or with respect to this Consent Decree will in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations may not exceed thirty (30) Days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends the other party a written Notice of Dispute.

43. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fourteen (14) Days after the conclusion of the informal negotiations period, Defendant invokes the formal Dispute Resolution procedures by serving on the United States, in accordance with Section “XVII” (“Notices”) of this Consent Decree a written Statement of Position on the matter in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

44. Within fourteen (14) Days after receipt of Defendant's Statement of Position, the United States will serve on Defendant its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within fourteen (14) Days after receipt of the United States' Statement of Position, Defendant may submit a reply.

45. An administrative record of the dispute must be maintained by EPA and must contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by EPA or submitted by Defendant, will constitute the administrative record upon which the matter in dispute is to be resolved.

46. The Director of the Air Enforcement Division, (“OECA Director”), or a properly designated representative, will issue a final decision resolving the dispute. Where the dispute pertains to the performance of the Compliance Requirements under Section “VIII” of this Consent Decree, the decision will be upon the administrative record maintained by EPA pursuant to Paragraph 45. The decision of the Director will be binding on Defendant, subject only to the right to seek judicial review, in accordance with Paragraph 47 below.

47. The decision issued by EPA under Paragraph 46, may be reviewed by this Court upon a motion filed by Defendant and served upon the United States within fourteen (14) Days of receipt of EPA's decision.

48. In any dispute before the Court, Defendant shall have the burden of proof and the scope of review shall be as set forth in 5 U.S.C. § 706. Defendant shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the CAA.

49. The invocation of formal Dispute Resolution procedures under this Section will not extend, postpone or affect in any way any obligation of Defendant under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Paragraph 31. In the event that Defendant does not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section "X" ("Stipulated Penalties").

### XIII. INFORMATION COLLECTION AND RETENTION

50. The United States and its representatives, including attorneys, contractors, and consultants, will have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

- a. Monitor the progress of all requirements under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Assess Defendant's compliance with this Consent Decree.



51. Until the termination of this Consent Decree, Defendant must preserve, and must instruct its contractors and agents to preserve, all nonidentical copies of all records and documents (including documents in electronic form) now in its or its contractors' or agents' possession or control that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

52. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant must notify the United States at least ninety Days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph. Upon request by the United States, Defendant must deliver any such records or documents to EPA. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it must provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or information; (4) the name and tile of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege claimed by Defendant. No documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree may be withheld on the grounds that they are privileged.

53. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

#### XIV. FAILURE OF COMPLIANCE

54. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. § 7401, et seq., namely, Subchapter VI of the CAA (“Stratospheric Ozone Protection”), 42 U.S.C. §§ 7671-7671q. Notwithstanding the United States' review and approval of any document(s) submitted to it by Defendant pursuant to this Consent Decree, Defendant will remain solely responsible for compliance with the terms of the CAA and this Consent Decree.

#### XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

55. This Consent Decree resolves the claims of the United States for civil penalties and for injunctive relief for the violations alleged in the Complaint through the date of lodging of this Consent Decree. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of Defendant.

56. Subject to Paragraph 22, neither this Consent Decree, nor any requirement hereunder, is to be interpreted to be a Permit, or a modification of an existing Permit, issued pursuant to the CAA, 42 U.S.C. § 7401 et seq., nor will it in any way relieve Defendant of its obligation to obtain a Permit and comply with the requirements of any Permit or with any other applicable Federal or State, and local statutes and regulations.

57. This Consent Decree may not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

58. Defendant is responsible for achieving and maintaining complete compliance with all

applicable federal, state and local laws, regulations, and permits. Defendant's compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

59. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

60. This Consent Decree may not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

61. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

#### XVI. COSTS

62. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Paragraphs 15 and 33.

#### XVII. NOTICES

63. Except as otherwise provided in this Consent Decree, whenever written notifications, submissions, or communications to the United States or to the Defendant are required by this Consent Decree, they must be made in writing and addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044

Or by Overnight Courier Service to

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
601 D. Street, N.W., Room 2121  
Washington, D.C. 20004

And to EPA (for each region where the subject facility or facilities are located):

Region 1: CFC Coordinator  
Air Enforcement  
U.S. EPA Region 1  
One Congress Street  
Boston, Massachusetts 02114

Region 3: CFC Coordinator  
Air Enforcement  
U.S. EPA Region 3  
303 Methodist Building  
11<sup>th</sup> and Chaplain Street  
Wheeling, WV 26003

Region 4: CFC Coordinator  
Air Enforcement Branch  
U.S. EPA Region 4 -12<sup>th</sup> Floor  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Region 5: CFC Coordinator  
U.S. EPA Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3507

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

Region 7: CFC Coordinator  
U.S. EPA, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Region 9: CFC Coordinator  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

As to the Defendant:

Michael J. Maher  
Swanson, Martin & Bell, LLP  
330 North Wabash Avenue, Suite 3300  
Chicago, Illinois 60611

64. 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; or sent by overnight courier service, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. Any such materials shall include a reference to the name, caption and number of this action.

**XVIII. RETENTION OF JURISDICTION**

65. The Court will retain jurisdiction of this case until termination of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section “XII” (“Dispute Resolution”) of this Consent Decree.

**XIX. MODIFICATION**

66. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VIII (“Compliance Requirements”) of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such

modification effects a material change to the terms of this Consent Decree or materially affects Defendant's ability to meet the objectives of this Consent Decree.

## XX. TERMINATION

67. This Consent Decree shall terminate after Defendant has fulfilled all of its obligations under this Consent Decree. To terminate this Consent Decree, Defendant shall submit a certification to the United States, at the addresses set forth in Section XVII (Notices), stating that Defendant 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 Defendant in writing that the United States does not agree that Defendant 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 Defendant receives the notice of disagreement from the United States. If the Parties are unable to resolve the disagreement within those thirty (30) days, Defendant may petition the Court to resolve the disagreement.

## XXI. PUBLIC PARTICIPATION

68. This Consent Decree will be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 U.S.C. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendant consents to the entry of this Consent Decree without further notice and will not oppose entry of this Consent Decree.



## XXII. SIGNATORIES/SERVICE

69. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

70. This Consent Decree may be signed in counterparts, and such counterpart signature pages will be given full force and effect.

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

72. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## XXIII. INTEGRATION

73. This Consent Decree and the attached Appendices "A" and "B" constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor can it be used in construing the terms of this Consent Decree.

## XXIV. FINAL JUDGMENT



74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

So Ordered and Approved in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_,  
2006

---

United States District Judge

CONSENT DECREE  
U. S. v. Newly Weds Foods, Inc. (Clean Air Act)  
Northern District of Illinois

FOR THE UNITED STATES OF AMERICA

\_\_\_\_\_  
DATED:

\_\_\_\_\_  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources  
Division

\_\_\_\_\_  
DATED:

\_\_\_\_\_  
STEVEN D. ELLIS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-3163  
steven.ellis@usdoj.gov

CONSENT DECREE  
U. S. v. Newly Weds Foods, Inc. (Clean Air Act)  
Northern District of Illinois

FOR THE UNITED STATES OF AMERICA (Continued)

PATRICK J. FITZGERALD  
United States Attorney  
Northern District of Illinois

\_\_\_\_\_  
DATED:

By: \_\_\_\_\_

Assistant United States Attorney  
United States Attorneys Office  
219 S. Dearborn St.  
5<sup>th</sup> Floor  
Chicago, Illinois 60604

\_\_\_\_\_  
DATED:

\_\_\_\_\_  
GRANTA Y. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

CONSENT DECREE RE:  
U. S. v. Newly Weds Foods, Inc.  
Northern District of Illinois

FOR THE DEFENDANT

Newly Weds Foods, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED: \_\_\_\_\_