

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COSTCO WHOLESALE)
 CORPORATION,)
)
 Defendant.)
 _____)

Case No. 3:14-cv-03989

CONSENT DECREE

TABLE OF CONTENTS

1

2

3 I. JURISDICTION, VENUE, AND NOTICE.....2

4 II. APPLICABILITY.....2

5 III. OBJECTIVES.....3

6 IV. DEFINITIONS.....3

7 V. CIVIL PENALTY.....6

8 VI. COMPLIANCE REQUIREMENTS.....7

9

10 A. Refrigerant Compliance Management Plan.....7

11 B. Corporate-Wide Leak Rate Reductions7

12 C. Retrofit or Replacement of Covered Appliances at Existing

13 Warehouses.....9

14 D. New Warehouses10

15 VII. PARTICIPATION IN RECOGNITION PROGRAMS10

16 VIII. REPORTING REQUIREMENTS11

17 IX. STIPULATED PENALTIES12

18 X. FORCE MAJEURE15

19 XI. DISPUTE RESOLUTION17

20 XII. INFORMATION COLLECTION AND RETENTION19

21 XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....20

22 XIV. COSTS21

23 XV. NOTICES.....21

24 XVI. EFFECTIVE DATE.....23

25 XVII. RETENTION OF JURISDICTION.....23

26 XVIII. MODIFICATION23

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| | | |
|--------|---------------------------|----|
| XIX. | TERMINATION..... | 23 |
| XX. | PUBLIC PARTICIPATION..... | 24 |
| XXI. | SIGNATORIES/SERVICE..... | 24 |
| XXII. | INTEGRATION | 25 |
| XXIII. | FINAL JUDGMENT | 25 |
| XXIV. | APPENDICES | 25 |

1 WHEREAS, Plaintiff, the United States of America, on behalf of the United States
2 Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently
3 with this Consent Decree, alleging that Defendant, Costco Wholesale Corporation (“Costco”),
4 violated Section 608 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7671g, and the
5 commercial refrigerant repair and recordkeeping regulations at 40 C.F.R. Part 82, Subpart F,
6 §§ 82.150-82.169 (Recycling and Emissions Reduction);

7 WHEREAS, the Complaint alleges that Costco has failed to comply with the leak repair
8 and/or recordkeeping requirements of 40 C.F.R. Part 82, Subpart F, at some or all of the
9 Warehouses identified in Appendix A to this Consent Decree;

10 WHEREAS, on November 1, 2007, EPA issued an information request to Costco
11 pursuant to Section 114 of the Act, 42 U.S.C. § 7414, regarding the repair of leaks from
12 commercial refrigeration appliances normally containing more than 50 pounds of refrigerant that
13 includes a class I or class II ozone-depleting substance, and EPA subsequently narrowed such
14 request to cover 45 Warehouses in California, Arizona, Nevada, and Hawaii;

15 WHEREAS, on January 17, 2008, and March 11, 2008, Costco submitted its responses to
16 EPA’s information request, including approximately 25,000 pages of equipment records;

17 WHEREAS, the allegations in the Complaint are based on EPA’s analysis of the
18 information contained in Costco’s responses to EPA’s information request;

19 WHEREAS, according to the data in Costco’s leak monitoring system, Costco’s
20 Corporate-Wide Average Leak Rate for the 12 months from March 2010 to February 2011 was
21 24.1 percent;

22 WHEREAS, between January 1, 2013, and June 20, 2014, Costco retrofitted all Covered
23 Appliances at 32 Warehouses to use Non-ODS Refrigerant;

24 WHEREAS, Costco denies liability to the United States arising out of the transactions or
25 occurrences alleged in the Complaint;

26 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
27 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
28 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

1 NOW, THEREFORE, before the taking of any testimony, without the adjudication of or
2 admission of any issue of fact or law except as provided in Section I, and with the consent of the
3 Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

4 I. JURISDICTION, VENUE, AND NOTICE

5 1. This Court has jurisdiction over the subject matter of this action and over the
6 Parties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345,
7 and 1355. Venue lies in this district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b),
8 and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the alleged violations in the Complaint
9 are alleged to have occurred in, and Costco conducts business in, this judicial district. For
10 purposes of this Decree, or any action to enforce this Decree, Costco consents to the Court's
11 jurisdiction over this Decree and any such action and over Costco and consents to venue in this
12 district.

13 2. The United States has given notice of the commencement of this action to the
14 applicable air pollution control agencies as required by Section 113(b) of the Act, 42 U.S.C.
15 § 7413(b).

16 II. APPLICABILITY

17 3. The obligations of this Consent Decree apply to and are binding upon the United
18 States, and upon Costco and any successors, assigns, or other entities or persons otherwise bound
19 by law.

20 4. At least 30 days prior to any transfer of ownership or operation of a Warehouse,
21 Costco shall provide a copy of this Consent Decree to the proposed transferee. If the transferee
22 is a Costco affiliate, this Consent Decree shall continue to apply in full. At least 15 days prior to
23 a transfer to a non-Costco affiliate, Costco shall provide written notice of the prospective
24 transfer, together with a copy of the proposed written agreement, to the United States
25 Department of Justice, in accordance with Section XV of this Decree (Notices), and shall submit
26 to the United States a plan to ensure that the Refrigerant Compliance Management Plan, or
27 another refrigerant compliance management plan approved by EPA, continues to be
28 implemented at the transferred Warehouse. Any attempt to transfer ownership or operation of a

1 Warehouse without complying with this Paragraph constitutes a violation of this Decree.

2 5. Costco shall provide a copy of this Consent Decree to all officers and managers
3 whose duties materially include compliance with any provision of this Decree.

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

7 III. OBJECTIVES

8 7. The objectives of this Consent Decree are: (a) to further the goals of Subchapter
9 VI of the Act, 42 U.S.C. §§ 7671-7671q, and EPA’s commercial refrigerant repair and
10 recordkeeping regulations at 40 C.F.R. Part 82, Subpart F, and (b) to resolve the civil claims of
11 the United States as provided in Section XIII (Effect of Settlement/Reservation of Rights).

12 IV. DEFINITIONS

13 8. Terms used in this Consent Decree that are defined in the Act or in regulations
14 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such
15 regulations as of the date of lodging of this Decree, unless otherwise provided in this Decree.
16 Whenever the terms set forth below are used in this Consent Decree, the following definitions
17 shall apply:

18 a. “Appliance,” as defined in 40 C.F.R. § 82.152, shall mean any device
19 which contains and uses a Refrigerant and which is used for household or commercial purposes,
20 including any air conditioner, refrigerator, chiller, or freezer;

21 b. “Centrally Monitored Refrigerant Leak Detection System” shall mean an
22 automated, computerized system for detecting Refrigerant leaks that, upon detecting a leak,
23 automatically notifies Costco staff at the Warehouse and at Costco’s headquarters or other
24 central location responsible for overseeing multiple Warehouses;

25 c. “Complaint” shall mean the complaint filed by the United States in this
26 action;

27 d. “Consent Decree” or “Decree” shall mean this Decree and all appendices
28 attached hereto (listed in Section XXIV);

1 e. “Costco” shall mean Defendant Costco Wholesale Corporation;

2 f. “Corporate-Wide Average Leak Rate” for a calendar year shall mean the
3 total number of pounds of Refrigerant added to all Covered Appliances at all Warehouses during
4 such calendar year (not including the initial charge of Refrigerant added to any new Covered
5 Appliance) divided by the total Full Charge of all Covered Appliances at all Warehouses during
6 such calendar year. For purposes of this subparagraph, the “total number of pounds of
7 Refrigerant added to all Covered Appliances” shall not include (i) the initial charge of
8 Refrigerant added to any new Covered Appliance; (ii) where Refrigerant has been recovered
9 from an existing Covered Appliance in compliance with 40 C.F.R. § 82.156, the amount of any
10 Refrigerant used to recharge such Covered Appliance, up to the amount of Refrigerant
11 recovered; or (iii) the amount of any Refrigerant added to a Covered Appliance to replace
12 Refrigerant released as the result of an event that EPA agrees constitutes a force majeure event
13 under Section X of this Consent Decree (Force Majeure). For purposes of this subparagraph, the
14 “total Full Charge of all Covered Appliances” shall include the Full Charge of any appliance that
15 was at one time a Covered Appliance and that, after January 1, 2013, has been retrofitted to use,
16 or replaced by an appliance that uses, refrigerant that does not consist in part or whole of a class I
17 or class II ozone-depleting substance;

18 g. “Covered Appliance” shall mean a commercial refrigeration Appliance
19 with a Full Charge of more than 50 pounds of Refrigerant;

20 h. “Day” shall mean a calendar day. In computing any period of time under
21 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the
22 period shall run until the close of business of the next business day;

23 i. “Effective Date” shall have the definition provided in Section XVI;

24 j. “EPA” shall mean the United States Environmental Protection Agency
25 and any successor departments or agencies of the United States;

26 k. “Full Charge,” as defined in 40 C.F.R. § 82.152, shall mean the amount of
27 Refrigerant required for normal operating characteristics and conditions of the Appliance as
28 determined by using one or a combination of the following four methods:

1 i. Use the equipment manufacturer’s determination of the correct
2 Full Charge for the equipment;

3 ii. Determine the Full Charge by making appropriate calculations
4 based on component sizes, density of Refrigerant, volume of piping, and other relevant
5 considerations;

6 iii. Use actual measurements of the amount of Refrigerant added or
7 evacuated from the appliance; and/or

8 iv. Use an established range based on the best available data regarding
9 the normal operating characteristics and conditions for the Appliance, where the midpoint of the
10 range will serve as the Full Charge, and where records are maintained in accordance with 40
11 C.F.R. § 82.166(q);

12 1. “Global Warming Potential” shall mean how much a given mass of a
13 chemical contributes to global warming over a 100-year time horizon compared to the same mass
14 of carbon dioxide, as determined pursuant to IPCC, Climate Change 2007: The Physical Science
15 Basis, Contribution of Working Group I to the Fourth Assessment Report of the
16 Intergovernmental Panel on Climate Change (2007).

17 m. “Glycol Secondary Loop Refrigeration System” shall mean a refrigeration
18 system in which the secondary fluid loop, circulating between the primary fluid loop and the
19 refrigerator or chiller, contains propylene glycol and not Refrigerant as the heat transfer fluid;

20 n. “Non-ODS Refrigerant” shall mean any substance not consisting in part or
21 whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and
22 provides a cooling effect;

23 o. “Paragraph” shall mean a portion of this Decree identified by an Arabic
24 numeral or an upper or lower case letter;

25 p. “Parties” shall mean the United States and Costco;

26 q. “Refrigerant,” as defined in 40 C.F.R. § 82.152, shall mean any substance
27 consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat
28 transfer purposes and provides a cooling effect;

1 on behalf of Costco. Costco may change the individual to receive payment instructions on their
2 behalf by providing written notice of such change to the United States in accordance with
3 Section XV (Notices). At the time of payment, Costco shall send notice that payment has been
4 made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA
5 Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, OH 45268; and (ii) to the
6 United States via email or regular mail in accordance with Section XV. Such notice shall
7 reference the CDCS Number and DOJ case number 90-5-2-1-09643.

8 11. Costco shall not deduct any penalties paid under this Decree pursuant to this
9 Section or Section IX (Stipulated Penalties) in calculating its federal income tax.

10 VI. COMPLIANCE REQUIREMENTS

11 A. Refrigerant Compliance Management Plan

12 12. Starting no later than 30 days after the Effective Date, Costco shall implement the
13 Refrigerant Compliance Management Plan.

14 13. Prior to implementing any amendments or changes to its Refrigerant Compliance
15 Management Plan, Costco shall submit a revised Refrigerant Compliance Management Plan to
16 EPA along with a letter identifying the amendments or changes. Costco shall implement its
17 amended or changed Refrigerant Compliance Management Plan unless and until EPA notifies
18 Costco in writing that it declines to approve such amendments or changes and provides written
19 comments. Within 30 days of receiving EPA's written notification, Costco shall either (i) revise
20 the Refrigerant Compliance Management Plan consistent with EPA's written comments and
21 submit the revised Refrigerant Compliance Management Plan to EPA, or (ii) invoke Dispute
22 Resolution under Section XI of this Consent Decree.

23 B. Corporate-Wide Leak Rate Reductions

24 14. Costco shall achieve a Corporate-Wide Average Leak Rate that is at or below:

25 a. 22.3% percent for the first calendar year after the year of the Effective
26 Date;

27 b. 20.7% percent for the second calendar year after the year of the Effective
28 Date; and

1 c. 19.1% percent for the third calendar year after the year of the Effective
2 Date.

3 15. If Costco fails to achieve a Corporate-Wide Average Leak Rate set forth in
4 Paragraph 14(a) or (b) for the calendar year specified in that Paragraph, Costco shall take the
5 following actions:

6 a. Costco shall pay a stipulated penalty pursuant to Section IX of this
7 Consent Decree.

8 b. By March 1 of the year after the calendar year for which Costco failed to
9 achieve the Corporate-Wide Average Leak Rate set forth in Paragraph 14, Costco shall submit to
10 EPA a proposed Corrective Action Plan and shall implement the proposed Corrective Action
11 Plan in accordance with the schedule set forth therein. The proposed Corrective Action Plan
12 shall include (i) a description of all actions taken or to be taken to seek to ensure that Costco
13 achieves the Corporate-Wide Average Leak Rate set forth in Paragraph 14 for the year after the
14 calendar year for which Costco failed to achieve the required Corporate-Wide Average Leak
15 Rate; and (ii) with respect to actions not already completed, the schedule for their
16 implementation.

17 c. If EPA provides written comments on the proposed Corrective Action
18 Plan, Costco shall, within 30 days of receiving EPA's written comments, either (i) revise the
19 Corrective Action Plan consistent with EPA's written comments, submit the revised Corrective
20 Action Plan to EPA, and implement the revised Corrective Action Plan, or (ii) invoke Dispute
21 Resolution under Section XI of this Consent Decree.

22 16. If Costco fails to achieve the Corporate-Wide Average Leak Rate set forth in
23 Paragraph 14(c) for the third calendar year after the year of the Effective Date, Costco shall take
24 the following actions:

25 a. Costco shall pay a stipulated penalty pursuant to Section IX of this
26 Consent Decree.

27 b. By March 1 of the fourth calendar year after the year of the Effective
28 Date, Costco shall submit to EPA a proposed Corrective Action Plan and shall implement the

1 proposed Corrective Action Plan in accordance with the schedule set forth therein. The proposed
 2 Corrective Action Plan shall include (i) a description of all actions taken or to be taken to seek to
 3 ensure that Costco achieves a Corporate-Wide Average Leak Rate that is at or below 19.1% for
 4 the fourth calendar year after the year of the Effective Date; and (ii) with respect to actions not
 5 already completed, the schedule for their implementation.

6 c. Costco shall achieve a Corporate-Wide Average Leak Rate that is at or
 7 below 19.1% for the fourth calendar year after the year of the Effective Date.

8 17. If Costco is required, pursuant to Paragraph 16(c), to achieve a Corporate-Wide
 9 Average Leak Rate that is at or below 19.1% for the fourth calendar year after the year of the
 10 Effective Date, and Costco fails to achieve such Corporate-Wide Average Leak Rate, Costco
 11 shall take the following actions:

12 a. Costco shall pay a stipulated penalty pursuant to Section IX of this
 13 Consent Decree.

14 b. By March 1 of the fifth calendar year after the year of the Effective Date,
 15 Costco shall submit to EPA a written report that provides a detailed explanation of the cause(s)
 16 of such failure.

17 C. Retrofit or Replacement of Covered Appliances at Existing Warehouses

18 18. By the end of the third calendar year after the year of the Effective Date, at no
 19 fewer than 30 Warehouses, Costco shall either retrofit all Covered Appliances to use Non-ODS
 20 Refrigerant with a Global Warming Potential no greater than that of the refrigerant R-407F or
 21 replace all Covered Appliances with new commercial refrigeration appliances that use Non-ODS
 22 Refrigerant with a Global Warming Potential no greater than that of the refrigerant R-407F,
 23 pursuant to the following deadlines:

| <u>Deadline</u> | <u>Cumulative Number of Warehouses Addressed</u> |
|--|--|
| End of first calendar year after year of Effective Date | 10 |
| End of second calendar year after year of Effective Date | 20 |
| End of third calendar year after year of Effective Date | 30 |

1 Costco shall have sole discretion to select the Warehouses at which Covered Appliances will be
2 retrofitted or replaced and to elect retrofit or replacement for each such Warehouse. In selecting
3 the Warehouses at which Covered Appliances will be retrofitted or replaced, Costco shall
4 consider, *inter alia*, the Warehouses' history of Refrigerant leaks and potential for future
5 Refrigerant leaks absent the retrofit or replacement. Warehouses at which Costco has retrofitted
6 or replaced all Covered Appliances between January 1, 2013, and the Effective Date of this
7 Consent Decree shall count towards Costco's compliance with the requirements of this
8 Paragraph.

9 D. New Warehouses

10 19. Glycol Secondary Loop Refrigeration Systems. Costco shall install a Glycol
11 Secondary Loop Refrigeration System for all medium-temperature Covered Appliances at all
12 one-story Warehouses opened during the three calendar years after the year of the Effective
13 Date. Costco may satisfy this requirement at any Warehouse by installing an alternative
14 refrigeration system that will use no more Refrigerant than a Glycol Secondary Loop
15 Refrigeration System would use at that Warehouse. No less than 30 days prior to commencing
16 construction on any Warehouse at which Costco will install such an alternative refrigeration
17 system, Costco shall provide written notice to EPA that includes supporting information
18 demonstrating that the proposed alternative refrigeration system will use no more Refrigerant
19 than a Glycol Secondary Loop Refrigeration System would use at that Warehouse.

20 20. Centrally Monitored Refrigerant Leak Detection Systems. Costco shall install
21 Centrally Monitored Refrigerant Leak Detection Systems according to the manufacturer's
22 specifications at all Warehouses opened during the three calendar years after the year of the
23 Effective Date.

24 VII. PARTICIPATION IN RECOGNITION PROGRAMS

25 21. Costco shall not seek warehouse certification from, or partnership in, any federal
26 or state recognition program relating to ozone-depleting substances, including EPA's GreenChill
27 Advanced Refrigeration Partnership, until termination of this Consent Decree. This Paragraph
28 shall not be construed to prohibit Costco's exchange of data or information with or through any

1 such recognition program.

2 22. Costco shall not at any time use or rely on measures taken in order to comply with
3 the obligations of Section VI of this Consent Decree, or on any reduction in its Corporate-Wide
4 Average Leak Rate achieved pursuant to this Consent Decree, as the basis for participation in
5 any federal or state recognition program.

6 VIII. REPORTING REQUIREMENTS

7 23. No later than March 1 of each year after the year of the Effective Date, Costco
8 shall submit to the United States a Compliance Report that includes the following information
9 for the prior calendar year:

- 10 a. a list of all Warehouse openings and closings;
- 11 b. a description of Costco's retrofit or replacement of Covered Appliances at
12 Warehouses pursuant to Paragraph 18 of this Consent Decree, including a description of the
13 Warehouses' history (over the prior calendar year) of Refrigerant leaks and potential for future
14 Refrigerant leaks absent the retrofit or replacement;
- 15 c. a description of all refrigeration systems and leak detection systems
16 installed at each Warehouse that opened;
- 17 d. the Full Charge, in pounds, of each Covered Appliance at each
18 Warehouse;
- 19 e. the number of pounds of Refrigerant added to each Covered Appliance at
20 each Warehouse;
- 21 f. the Corporate-Wide Average Leak Rate;
- 22 g. the total number of pounds of Refrigerant added to all Covered Appliances
23 at all Warehouses;
- 24 h. a certification that Costco has complied with the Refrigerant Compliance
25 Management Plan during the prior calendar year, or a description of all incidences of
26 noncompliance with the Refrigerant Compliance Management Plan during the prior calendar
27 year and a certification that Costco has otherwise complied with the Refrigerant Compliance
28 Management Plan; and

1 i. an affirmative statement regarding Costco's compliance or noncompliance
2 with 40 C.F.R. Part 82, Subpart F, at the Warehouses during the prior calendar year.

3 24. Data in each Compliance Report submitted by Costco under this Section shall be
4 in Microsoft Excel or equivalent spreadsheet form. In addition to submitting each Compliance
5 Report to the United States in accordance with the requirements of Section XV of this Consent
6 Decree, Costco shall submit each Compliance Report to EPA in electronic form.

7 25. Each Compliance Report submitted by Costco under this Section shall be signed
8 by a Costco official and shall include the following certification:

9 I certify under penalty of law that this document and all attachments were
10 prepared under my direction or supervision in accordance with a system designed
11 to assure that qualified personnel properly gather and evaluate the information
12 submitted. Based on my inquiry of the person or persons who manage the system,
13 or those persons directly responsible for gathering the information, the
14 information submitted is, to the best of my knowledge and belief, true, accurate,
15 and complete. I am aware that there are significant penalties for submitting false
16 information, including the possibility of fine and imprisonment for knowing
17 violations.

18 26. Whenever any violation of this Consent Decree or any other event affecting
19 Costco's performance under this Decree, or the performance of its Warehouses, may pose an
20 immediate threat to the public health or welfare or the environment, Costco shall notify EPA
21 orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours
22 after Costco first knew of the violation or event. This procedure is in addition to the
23 requirements set forth in Paragraphs 23 through 25.

24 27. The reporting requirements of this Consent Decree do not relieve Costco of any
25 reporting obligations required by the Clean Air Act or implementing regulations, or by any other
26 federal, state, or local law, regulation, permit, or other requirement.

27 28. Any information provided pursuant to this Consent Decree may be used by the
28 United States in any proceeding to enforce the provisions of this Consent Decree and as
otherwise permitted by law.

IX. STIPULATED PENALTIES

29. Costco shall be liable for stipulated penalties to the United States for violations of

1 this Consent Decree as specified below, unless excused under Section X (Force Majeure).

2 30. Late Payment of Civil Penalty. If Costco fails to pay the civil penalty required to
3 be paid under Section V of this Decree (Civil Penalty) when due, Costco shall pay a stipulated
4 penalty of \$2,500 per day for each day that the payment is late.

5 31. Refrigerant Compliance Management Plan. For each failure to implement the
6 Refrigerant Compliance Management Plan at a Warehouse as required by Paragraph 12, Costco
7 shall pay a stipulated penalty of \$500 per violation per Warehouse per day.

8 32. Corporate-Wide Average Leak Rates

9 a. If Costco fails to achieve a Corporate-Wide Average Leak Rate that is at
10 or below the required Corporate-Wide Average Leak Rate for a calendar year as set forth in
11 Paragraph 14, Costco shall pay stipulated penalties as follows:

12 First calendar year (Paragraph 14(a)): \$50,000

13 Second calendar year (Paragraph 14(b)): \$100,000

14 Third calendar year (Paragraph 14(c)): \$150,000

15 b. If Costco fails to achieve the Corporate-Wide Average Leak Rate set forth
16 in Paragraph 14(c) for the third calendar year after the year of the Effective Date and then fails to
17 achieve a Corporate-Wide Average Leak Rate that is at or below 19.1% for the fourth calendar
18 year after the year of the Effective Date pursuant to Paragraph 16(c), Costco shall pay a
19 stipulated penalty of \$150,000.

20 33. Retrofit or Replacement of Covered Appliances at Existing Warehouses. For
21 failure to complete retrofit or replacement of all Covered Appliances at existing Warehouses as
22 required by Paragraph 18, Costco shall pay a stipulated penalty of \$2,000 per Warehouse per day
23 until such retrofit or replacement is completed.

24 34. New Warehouses

25 a. For each failure to install a Glycol Secondary Loop Refrigeration System
26 at a new Warehouse, or alternative refrigeration system that will use no more Refrigerant than a
27 Glycol Secondary Loop Refrigeration System would use at that Warehouse, as required by
28 Paragraph 19, Costco shall pay a stipulated penalty of \$2,000 per Warehouse per day until such

1 installation is completed. Such penalty shall begin to accrue on the day after the date the
2 Warehouse opens to the public.

3 b. For each failure to install a Centrally Monitored Refrigerant Leak
4 Detection System at a new Warehouse as required by Paragraph 20, Costco shall pay a stipulated
5 penalty of \$2,000 per Warehouse per day until such installation is completed. Such penalty shall
6 begin to accrue on the day after the date the Warehouse opens to the public.

7 35. Reporting Requirements. For each failure to comply with the requirements of
8 Section VIII of this Consent Decree within the specified time schedules established by this
9 Decree, Costco shall pay a stipulated penalty of \$1,000 per violation per day.

10 36. Stipulated penalties under this Section shall begin to accrue on the day after
11 performance is due or on the day a violation occurs, whichever is applicable, and shall continue
12 to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated
13 penalties shall accrue simultaneously for separate violations of this Consent Decree.

14 37. Costco shall pay any stipulated penalty within 30 days of receiving the United
15 States' written demand, except as provided in Paragraph 39 of this Consent Decree.

16 38. The United States may, in the unreviewable exercise of its discretion, reduce or
17 waive stipulated penalties otherwise due it under this Consent Decree.

18 39. Stipulated penalties shall continue to accrue as provided in Paragraph 36 during
19 any Dispute Resolution, but need not be paid until the following:

20 a. If the dispute is resolved by agreement or by a decision of EPA that is not
21 appealed to the Court, Costco shall pay accrued penalties determined to be owing, together with
22 interest, to the United States within 30 days of the effective date of the agreement or the receipt
23 of EPA's decision or order.

24 b. If the dispute is appealed to the Court and the United States prevails in
25 whole or in part, Costco shall pay all accrued penalties determined by the Court to be owing,
26 together with interest, within 60 days of receiving the Court's decision or order, except as
27 provided in subparagraph (c), below.

28 c. If any Party appeals the District Court's decision, Costco shall pay all

1 accrued penalties determined to be owing, together with interest, within 15 days of receiving the
2 final appellate court decision.

3 40. Costco shall pay stipulated penalties owing to the United States in the manner set
4 forth and with the confirmation notices required by Paragraph 10, except that the transmittal
5 letter shall state that the payment is for stipulated penalties and shall state for which violation(s)
6 the penalties are being paid.

7 41. If Costco fails to pay stipulated penalties according to the terms of this Consent
8 Decree, Costco shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,
9 accruing as of the date payment became due. Nothing in this Paragraph shall be construed to
10 limit the United States from seeking any remedy otherwise provided by law for Costco's failure
11 to pay any stipulated penalties.

12 42. Subject to the provisions of Section XIII of this Consent Decree (Effect of
13 Settlement/Reservation of Rights), the stipulated penalties provided for in this Decree shall be in
14 addition to any other rights, remedies, or sanctions available to the United States for Costco's
15 violation of this Decree or applicable law. Costco reserves its rights to contest any such
16 additional actions taken by the United States against Costco. Where a violation of this Consent
17 Decree is also a violation of Section 608 of the Act or 40 C.F.R. Part 82, Subpart F, Costco shall
18 be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for
19 such violation.

20 X. FORCE MAJEURE

21 43. "Force majeure," for purposes of this Consent Decree, is defined as any event
22 arising from causes beyond the control of Costco, of any entity controlled by Costco, or of
23 Costco's contractors, that impedes – i.e., delays or prevents – the performance of any obligation
24 under this Consent Decree despite Costco's best efforts to fulfill the obligation. The requirement
25 that Costco exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate
26 any potential force majeure event and best efforts to address the effects of any such event (a) as it
27 is occurring and (b) after it has occurred to seek to prevent or minimize any resulting impedance
28 to the greatest extent possible. "Force Majeure" does not include Costco's financial inability to

1 perform any obligation under this Consent Decree.

2 44. If any event occurs or has occurred that may impede the performance of any
3 obligation under this Consent Decree, whether or not caused by a force majeure event, Costco
4 shall provide notice orally or by electronic or facsimile transmission to EPA, within seven days
5 of when Costco first knew that the event might cause an impedance. Within 30 days thereafter,
6 Costco shall provide in writing to EPA an explanation and description of the reasons for the
7 impedance; the anticipated duration of the impedance; all actions taken or to be taken to prevent
8 or minimize the impedance; a schedule for implementation of any measures to be taken to
9 prevent or mitigate the impedance or the effect of the impedance; Costco's rationale for
10 attributing such impedance to a force majeure event if it intends to assert such a claim; and a
11 statement as to whether, in the opinion of Costco, such event may cause or contribute to an
12 endangerment to public health, welfare or the environment. Costco shall include with any notice
13 all available documentation supporting the claim that the impedance was attributable to a force
14 majeure. Failure to comply with the above requirements shall preclude Costco from asserting
15 any claim of force majeure for that event for the period of time of such failure to comply, and for
16 any additional impedance caused by such failure. Costco shall be deemed to know of any
17 circumstance of which Costco, any entity controlled by Costco, or Costco's contractors knew or
18 should have known.

19 45. If EPA agrees that the impedance or anticipated impedance is attributable to a
20 force majeure event, EPA will extend the time for performance of the obligations under this
21 Consent Decree that are affected by the force majeure event for such time as is necessary to
22 complete those obligations and/or reduce or waive stipulated penalties otherwise due under this
23 Decree as a result of Costco's failure to perform such obligations. An extension of the time for
24 performance of the obligations affected by the force majeure event shall not, of itself, extend the
25 time for performance of any other obligation. EPA will notify Costco in writing of its decision,
26 including the length of any extension for performance of the obligations affected by the force
27 majeure event.

28 46. If EPA does not agree that the impedance or anticipated impedance has been or

1 will be caused by a force majeure event, EPA will notify Costco in writing of its decision.

2 47. If Costco elects to invoke the dispute resolution procedures set forth in Section XI
3 (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any
4 such proceeding, Costco shall have the burden of demonstrating by a preponderance of the
5 evidence that the impedance or anticipated impedance has been or will be caused by a force
6 majeure event, that the duration of the impedance or the relief sought was or will be warranted
7 under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the
8 impedance, and that Costco complied with the requirements of Paragraphs 43 and 44, above. If
9 Costco carries this burden, the impedance at issue shall be deemed not to be a violation by
10 Costco of the affected obligation of this Consent Decree identified to EPA and the Court.

11 XI. DISPUTE RESOLUTION

12 48. Unless otherwise expressly provided for in this Consent Decree, the dispute
13 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
14 under or with respect to this Consent Decree. Costco's failure to seek resolution of a dispute
15 under this Section shall preclude Costco from raising any such issue as a defense to an action by
16 the United States to enforce any obligation of Costco arising under this Decree.

17 49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
18 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
19 considered to have arisen when Costco sends the United States a written Notice of Dispute.
20 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
21 negotiations shall not exceed 20 days from the date the dispute arises, unless that period is
22 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
23 then the position advanced by the United States shall be considered binding unless, within 20
24 days after the conclusion of the informal negotiation period, Costco invokes formal dispute
25 resolution procedures as set forth below.

26 50. Formal Dispute Resolution. Costco shall invoke formal dispute resolution
27 procedures, within the time period provided in the preceding Paragraph, by serving on the United
28 States a written Statement of Position regarding the matter in dispute. The Statement of Position

1 shall include, but need not be limited to, any factual data, analysis, or opinion supporting
2 Costco's position and any supporting documentation relied upon by Costco.

3 51. The United States shall serve its Statement of Position within 45 days of receipt of
4 Costco's Statement of Position. The United States' Statement of Position shall include, but need
5 not be limited to, any factual data, analysis, or opinion supporting that position and any
6 supporting documentation relied upon by the United States. The position advanced by the
7 United States shall be binding on Costco, unless Costco files a motion for judicial review of the
8 dispute in accordance with the following Paragraph.

9 52. Costco may seek judicial review of the dispute by filing with the Court and
10 serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a
11 motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of
12 receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The
13 motion shall contain a written statement of Costco's position on the matter in dispute, including
14 any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief
15 requested and any schedule within which the dispute must be resolved for orderly
16 implementation of the Consent Decree.

17 53. The United States shall respond to Costco's motion within the time period
18 allowed by the Local Rules of this Court. Costco may file a reply memorandum, to the extent
19 permitted by the Local Rules.

20 54. Standard of Review. Except as otherwise provided in this Consent Decree, in any
21 dispute brought under Paragraph 50, Costco shall bear the burden of demonstrating that its
22 position complies with this Consent Decree and that it is entitled to relief under applicable
23 principles of law. In their initial filings with the Court under Paragraphs 52 and 53, the Parties
24 shall state their respective positions as to the applicable standard of law for resolving the dispute.

25 55. The invocation of dispute resolution procedures under this Section shall not, by
26 itself, extend, postpone, or affect in any way any obligation of Costco under this Consent Decree,
27 unless and until final resolution of the dispute so provides. Stipulated penalties with respect to
28 the disputed matter shall continue to accrue from the first day of noncompliance, but payment

1 shall be stayed pending resolution of the dispute as provided in Paragraph 39. If Costco does not
2 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in
3 Section IX (Stipulated Penalties).

4 XII. INFORMATION COLLECTION AND RETENTION

5 56. The United States and its representatives, including attorneys, contractors, and
6 consultants, shall have the right of entry into any Warehouse covered by this Consent Decree, at
7 all reasonable times, upon presentation of credentials, to:

- 8 a. monitor the progress of activities required under this Consent Decree;
9 b. verify any data or information submitted to the United States in
10 accordance with the terms of this Consent Decree;
11 c. obtain documentary evidence, including photographs and similar data; and
12 d. assess Costco's compliance with this Consent Decree.

13 57. Until three years after the termination of this Consent Decree, Costco shall retain,
14 and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,
15 records, or other information (including documents, records, or other information in electronic
16 form) in its or its contractors' or agents' possession or control, or that come into its or its
17 contractors' or agents' possession or control, necessary to demonstrate Costco's performance of
18 its obligations under this Consent Decree. This information-retention requirement shall apply
19 regardless of any contrary corporate or institutional policies or procedures. At any time during
20 this information-retention period, upon written request by the United States, Costco shall within
21 30 days provide copies of any documents, records, or other information required to be
22 maintained under this Paragraph.

23 58. At the conclusion of the information-retention period provided in the preceding
24 Paragraph, Costco shall notify the United States at least 90 days prior to the destruction of any
25 documents, records, or other information subject to the requirements of the preceding Paragraph
26 and, upon written request by the United States, Costco shall within 30 days deliver any such non-
27 privileged documents, records, or other information to EPA. Costco may assert that certain
28 documents, records, or other information is privileged under the attorney-client privilege or any

1 other privilege recognized by federal law. If Costco asserts such a privilege, it shall provide the
2 following: (1) the title of the document, record, or information; (2) the date of the document,
3 record, or information; (3) the name and title of each author of the document, record, or
4 information; (4) the name and title of each addressee and recipient; (5) a description of the
5 subject of the document, record, or information; and (6) the privilege asserted by Costco.
6 However, no documents, records, or other information created or generated pursuant to the
7 requirements of this Consent Decree shall be withheld on grounds of privilege.

8 59. Costco may also assert that information required to be maintained or provided to
9 the United States under this Consent Decree is protected as Confidential Business Information
10 (“CBI”) under 40 C.F.R. Part 2. As to any information that Costco seeks to protect as CBI,
11 Costco shall follow the procedures set forth in 40 C.F.R. Part 2.

12 60. This Consent Decree in no way limits or affects any right of entry and inspection,
13 or any right to obtain information, held by the United States pursuant to applicable federal laws,
14 regulations, or permits, nor does it limit or affect any duty or obligation of Costco to maintain
15 documents, records, or other information imposed by applicable federal or state laws,
16 regulations, or permits.

17 XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

18 61. This Consent Decree resolves the civil claims of the United States against Costco
19 for any violations of 40 C.F.R. §§ 82.156(i), 82.166(k), or 82.166(m) at the Warehouses arising
20 out of facts and events that occurred prior to the date of lodging, including the civil claims of the
21 United States for the violations alleged in the Complaint through the date of lodging.

22 62. The United States reserves all legal and equitable remedies available to enforce
23 the provisions of this Consent Decree, except as expressly stated in Paragraph 61. This Consent
24 Decree shall not be construed to limit the rights of the United States to obtain penalties or
25 injunctive relief under the Act or implementing regulations, or under other federal laws,
26 regulations, or permit conditions, except as expressly specified in Paragraph 61.

27 63. In any subsequent administrative or judicial proceeding initiated by the United
28 States for injunctive relief, civil penalties, or other appropriate relief relating to the Warehouses,

1 Costco shall not assert, and may not maintain, any defense or claim based upon the principles of
2 waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or
3 other defenses based upon any contention that the claims raised by the United States in the
4 subsequent proceeding were or should have been brought in the instant case, except with respect
5 to claims that have been specifically resolved pursuant to Paragraph 61.

6 64. This Consent Decree is not a permit, or a modification of any permit, under any
7 federal, state, or local laws or regulations. Costco is responsible for achieving and maintaining
8 complete compliance with all applicable federal, state, and local laws, regulations, and permits;
9 and Costco's compliance with this Consent Decree shall be no defense to any action commenced
10 pursuant to any such laws, regulations, or permits, except as set forth herein. The United States
11 does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that
12 Costco's compliance with any aspect of this Consent Decree will result in compliance with
13 provisions of the Act, 42 U.S.C. § 7401 et seq., or with any other provisions of federal, state, or
14 local laws, regulations, or permits.

15 65. This Consent Decree does not limit or affect the rights of Costco or of the United
16 States against any third parties, not party to this Consent Decree, nor does it limit the rights of
17 third parties, not party to this Consent Decree, against Costco, except as otherwise provided by
18 law.

19 66. This Consent Decree shall not be construed to create rights in, or grant any cause
20 of action to, any third party not party to this Consent Decree.

21 XIV. COSTS

22 67. The Parties shall bear their own costs of this action, including attorney's fees,
23 except that the United States shall be entitled to collect the costs (including attorney's fees)
24 incurred in any action necessary to collect any portion of the civil penalty or any stipulated
25 penalties due but not paid by Costco.

26 XV. NOTICES

27 68. Unless otherwise specified herein, whenever notifications, submissions, or
28 communications are required by this Consent Decree, they shall be made in writing and

1 addressed as follows:

2 To the United States:

3 Chief, Environmental Enforcement Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 7611 Ben Franklin Station
7 Washington, DC 20044-7611
8 eescdcopy.enrd@usdoj.gov
9 Re: DOJ No. 90-5-2-1-09643

10 and

11 Brian Riedel (Riedel.Brian@epa.gov)
12 Andrew Chew (Chew.Andrew@epa.gov)
13 U.S. Environmental Protection Agency
14 Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 To EPA:

18 Brian Riedel (Riedel.Brian@epa.gov)
19 Andrew Chew (Chew.Andrew@epa.gov)
20 U.S. Environmental Protection Agency
21 Region IX
22 75 Hawthorne Street
23 San Francisco, CA 94105

24 To Costco:

25 General Counsel
26 Legal Department
27 Costco Wholesale Corporation
28 999 Lake Drive
Issaquah, WA 98027

and

Mark Schneider (MWSchneider@perkinscoie.com)
Chris Baird (JCBaird@perkinscoie.com)
Perkins Coie LLP
1201 Third Ave., Suite 4800
Seattle, WA 98101

69. Any Party may, by written notice to the other Parties, change its designated notice

1 recipient or notice address provided above.

2 70. Notices submitted pursuant to this Section shall be deemed submitted upon
3 mailing or electronic mailing, as applicable, unless otherwise provided in this Consent Decree or
4 by mutual agreement of the Parties in writing.

5 XVI. EFFECTIVE DATE

6 71. The Effective Date of this Consent Decree shall be the date upon which this
7 Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first,
8 as recorded on the Court's docket.

9 XVII. RETENTION OF JURISDICTION

10 72. The Court shall retain jurisdiction over this case until termination of this Consent
11 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
12 modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing
13 compliance with the terms of this Decree.

14 XVIII. MODIFICATION

15 73. The terms of this Consent Decree, including any attached appendices, may be
16 modified only by a subsequent written agreement signed by the Parties. Where the modification
17 constitutes a material change to this Decree, it shall be effective only upon approval by the
18 Court.

19 74. Any disputes concerning modification of this Decree shall be resolved pursuant to
20 Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of
21 proof provided by Paragraph 54, the Party seeking the modification bears the burden of
22 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of
23 Civil Procedure 60(b).

24 XIX. TERMINATION

25 75. After Costco has completed the requirements of Sections VI.A and VI.B of this
26 Consent Decree, has complied with all other requirements of this Decree, and has paid the civil
27 penalty and any accrued stipulated penalties as required by this Decree, Costco may serve upon
28 the United States a Request for Termination, stating that Costco has satisfied those requirements,

1 together with all necessary supporting documentation.

2 76. Following receipt by the United States of Costco's Request for Termination, the
3 Parties shall confer informally concerning the Request and any disagreement that the Parties may
4 have as to whether Costco has satisfactorily complied with the requirements for termination of
5 this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the
6 Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

7 77. If the United States does not agree that the Consent Decree may be terminated,
8 Costco may invoke Dispute Resolution under Section XI of this Decree. However, Costco shall
9 not seek Dispute Resolution of any dispute regarding termination, under Paragraph 50 of Section
10 XI, until 60 days after service of its Request for Termination.

11 XX. PUBLIC PARTICIPATION

12 78. This Consent Decree shall be lodged with the Court for a period of not less than
13 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
14 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
15 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
16 improper, or inadequate. Costco consents to entry of this Consent Decree without further notice
17 and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to
18 challenge any provision of the Decree, unless the United States has notified Costco in writing
19 that it no longer supports entry of the Decree.

20 XXI. SIGNATORIES/SERVICE

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

25 80. This Consent Decree may be signed in counterparts, and its validity shall not be
26 challenged on that basis. Costco agrees to accept service of process by mail with respect to all
27 matters arising under or relating to this Consent Decree and to waive the formal service
28 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any

1 applicable Local Rules of this Court including, but not limited to, service of a summons.

2 XXII. INTEGRATION

3 81. This Consent Decree constitutes the final, complete, and exclusive agreement and
4 understanding among the Parties with respect to the settlement embodied in the Decree and
5 supersedes all prior agreements and understandings, whether oral or written, concerning the
6 settlement embodied herein. Other than deliverables that are subsequently submitted and
7 approved pursuant to this Consent Decree, no other document, nor any representation,
8 inducement, agreement, understanding, or promise, constitutes any part of this Decree or the
9 settlement it represents, nor shall it be used in construing the terms of this Decree.

10 XXIII. FINAL JUDGMENT

11 82. Upon approval and entry of this Consent Decree by the Court, this Consent
12 Decree shall constitute a final judgment of the Court as to the United States and Costco.

13 XXIV. APPENDICES

14 83. The following appendices are attached to and part of this Consent Decree:
15 “Appendix A” is the list of Warehouses as of the date of lodging of the Consent Decree.
16 “Appendix B” is the Refrigerant Compliance Management Plan.

17
18
19 Dated and entered this _____ day of _____, 20____.

20
21
22 _____
23 United States District Judge
24 Northern District of California
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.
2 Costco Wholesale Corporation (N.D. Cal.):

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 

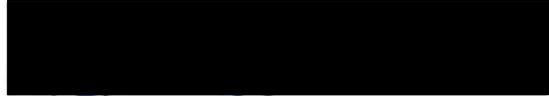
5
6 SAM HIRSCH
7 Acting Assistant Attorney General
8 Environment and Natural Resources Division

9 

10
11 MARK SABATH
12 Senior Attorney
13 Environmental Enforcement Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Washington, DC 20044-7611
18 (202) 514-1196
19
20
21
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.
2 Costco Wholesale Corporation (N.D. Cal.):

3 FOR PLAINTIFF UNITED STATES OF AMERICA:



5
6 SUSAN SHINKMAN, Director
7 Office of Civil Enforcement
8 Office of Enforcement and Compliance Assurance
9 U.S. Environmental Protection Agency
10 1200 Pennsylvania Ave., N.W.
11 Washington, D.C. 20460



13 *for* PHILLIP BROOKS
14 Director, Air Enforcement Division
15 Office of Civil Enforcement
16 Office of Enforcement and Compliance Assurance
17 U.S. Environmental Protection Agency
18
19
20
21
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.
2 Costco Wholesale Corporation (N.D. Cal.):

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 

5
6 JARED BLUMENFELD
7 Regional Administrator
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 

12 BRIAN P. RIEDEL
13 Assistant Regional Counsel
14 U.S. Environmental Protection Agency, Region IX
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Costco Wholesale Corporation (N.D. Cal.):

FOR DEFENDANT COSTCO WHOLESALE CORPORATION:



Franz Lazarus
Executive Vice President

Agent authorized to accept service on behalf of above-signed party:

John Sullivan
Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027

APPENDIX A

| Warehouse No. | Address | City | State |
|---------------|--------------------------|------------------|-------|
| 1 | 4401 4th Ave South | Seattle | WA |
| 6 | 400 Costco Dr Suite 150 | Tukwila | WA |
| 8 | 8629 120th Ave NE | Kirkland | WA |
| 9 | 15901 SE Jenkins Raod | Aloha | OR |
| 10 | 330 W Dimond Blvd | Anchorage | AK |
| 13 | 10000 Mickelberry Rd NW | Silverdale | WA |
| 17 | 2828 Chad Dr | Eugene | OR |
| 19 | 4299 Guide Meridian St | Bellinghan | WA |
| 21 | 3150 Fostoria Way | Danville | CA |
| 24 | 1335 S Bradley | Santa Maria | CA |
| 25 | 2200 Harvard Way | Reno | NV |
| 28 | 27972 Cabot Rd | Laguna Niguel | CA |
| 38 | 1616 East Hammer Ln | Stockton | CA |
| 44 | 21300 Roscoe Blvd | Canoga Park | CA |
| 61 | 35100 Enchanted Pkwy S | Federal Way | WA |
| 63 | 4125 Debarr Rd | Anchorage | AK |
| 64 | 5500 Littlerock Rd SE | Tumwater | WA |
| 65 | 3639 Crater Lake Hwy | Medford | OR |
| 66 | 7619 N Division St | Spokane | WA |
| 67 | 3220 North Reserve St | Missoula | MT |
| 68 | 1010 Hawthorne | Salem | OR |
| 69 | 2290 King Ave W | Billings | MT |
| 88 | 1800 W Sample Rd | Pompano Beach | FL |
| 92 | 8300 Park Blvd | Doral | FL |
| 93 | 3250 Northlake Blvd | Lake Park | FL |
| 95 | 2219 SO 37th St | Tacoma | WA |
| 96 | 2505 Catron St | Bozeman | MT |
| 97 | 13130 SE 84th Ave | Clackamas | OR |
| 101 | 2500 NE Hwy 20 | Bend | OR |
| 103 | 301 5th St | Clarkston | WA |
| 106 | 1175 North 205th St | Seattle | WA |
| 107 | 5225 Commercial Blvd | Juneau | AK |
| 110 | 1801 10th Ave NW | Issaquah | WA |
| 111 | 7850 SE Dartmouth | Tigard | OR |
| 112 | 375 Highline Dr | East Wenatchee | WA |
| 114 | 10200 19th Ave SE | Everett | WA |
| 116 | 1420 Renaissance Blvd NE | Albuquerque | NM |
| 117 | 5700 Lindero Canyon Rd | Westlake Villate | CA |
| 119 | 540 Haleakala Hwy | Kahului | HI |
| 122 | 2655 El Camino Real | Tustin | CA |
| 124 | 1755 Hacienda Dr | Vista | CA |

Appendix A: List of Warehouses

| Warehouse No. | Address | City | State |
|---------------|-------------------------------|-------------------|-------|
| 125 | 1006 West Wabash Ave | Eureka | CA |
| 126/20 | 11000 Garden Grove Blvd | Garden Grove | CA |
| 127 | 700 Old Clear Creek Rd | Carson City | NV |
| 128 | 2660 Park Center Dr | Simi Valley | CA |
| 130 | 2901 Los Feliz Blvd | Los Angeles | CA |
| 135 | 380 W Ashlan Ave | Clovis | CA |
| 140 | 73-5600 Maiiau St | Kailua-Kona | HI |
| 143 | 1000 N Rengstorff | Mountain View | CA |
| 144 | 450 10th St | San Francisco | CA |
| 145 | 731 Pole Line Rd | Twin Falls | ID |
| 149 | 220 Sylvania Ave | Santa Cruz | CA |
| 182 | 14585 Biscayne Blvd | N Miami Beach | FL |
| 183 | 741 Orange Ave | Altamonte Springs | FL |
| 184 | 2101 Waterbridge Blvd | Orlando | FL |
| 185 | 3333 University Blvd | Winter Park | FL |
| 187/350 | 3980 Venture Dr | Duluth | GA |
| 188 | 6350 Peachtree Dunwoody Rd NE | Atlanta | GA |
| 189 | 645 Barrett Pkwy NW | Kennesaw | GA |
| 202 | 850 Glenrock Rd | Norfolk | VA |
| 203 | 575 E Ordnance Rd | Glen Burnie | MD |
| 204 | 4725 West Ox Rd | Fairfax | VA |
| 205 | 9650 West Broad St | Glen Allen | VA |
| 206 | 3000 Middle Country Rd | Nesconset | NY |
| 213 | 880 Russell Ave | Gaithersburg | MD |
| 214 | 10925 Baltimore Ave | Beltsville | MD |
| 218 | 21398 Price Cascades Plaza | Sterling | VA |
| 221 | 77 Willowbrook Blvd | Wayne | NJ |
| 222 | 2835 Route 35 N | Hazlet | NJ |
| 225 | 10701 Sudley Manor Dr | Manassas | VA |
| 226 | 1250 Old Country Rd | Westbury | NY |
| 227 | 7373 Boston Blvd | Springfield | VA |
| 230 | 125 Beacon Dr | Holbrook | NY |
| 231 | 80 South River St | Hackensack | NJ |
| 233 | 1200 S Fern St | Arlington | VA |
| 237 | 625 Broadhollow Rd | Melville | NY |
| 238 | 1830 Reservoir St | Harrisonburg | VA |
| 239 | 251 Front Royal Pike | Winchester | VA |
| 240 | 10 Garret Place | Commack | NY |
| 241 | 1 Industrial Ln | New Rochelle | NY |
| 243 | 32-50 Vernon Blvd | Long Island | NY |
| 244 | 156 State Route #10 West | East Hanover | NJ |

| Warehouse No. | Address | City | State |
|----------------------|---------------------------|--------------------|--------------|
| 247 | 12121 Jefferson Ave | Newport News | VA |
| 248 | 740 Upper State Rd | North Wales | PA |
| 249 | 1510 N Pointe Dr | Durham | NC |
| 301 | 11 Newbury St | Danvers | MA |
| 302 | 119 Daggett Dr | West Springfield | MA |
| 303 | 120 Stockwell Dr | Avon | MA |
| 304 | 200 Federal Rd | Brookfield | CT |
| 305 | 50 Overlook Blvd | Nanuet | NY |
| 306 | 20 Bridewell Place | Clifton | NJ |
| 307 | 311 Daniel Webster Hwy | Nashua | NH |
| 308 | 71 2nd Ave | Waltham | MA |
| 310 | 605 Rockaway Tpke | Lawrence | NY |
| 312 | 1718 Boston Post Rd | Milford | CT |
| 313 | 3600 E Main St | Waterbury | CT |
| 314 | 218 Lower Mountain View | Colchester | VT |
| 315 | 315 Route 15 N | Wharton | NJ |
| 316 | 2975 Richmond Ave | Staten Island | NY |
| 317 | 1875 Hempstead Rd | Lancaster | PA |
| 319 | 200 Legacy Blvd | Dedham | MA |
| 320 | 1055 Hudson St | Union | NJ |
| 321 | 20 Stew Leonard Dr | Yonkers | NY |
| 322 | 325 Promenade Blvd | Bridgewater | NJ |
| 323 | 205 Vineyard Rd | Edison | NJ |
| 324 | 779 Connecticut Ave | Norwalk | CT |
| 325 | 7077 Arundel Mills Circle | Hanover | MD |
| 326 | 1 Westchester Ave | Port Chester | NY |
| 327 | 5125 Jonestown Rd | Harrisburg | PA |
| 328 | 1050 Cranberry Square Dr | Cranberry Township | PA |
| 329 | 2361 Hwy 66 | Ocean Township | NJ |
| 330 | 10 Monocacy Blvd | Frederick | MD |
| 332 | 202 Costco Dr | Pittsburgh | PA |
| 333 | 2 Mystic View Rd | Everett | MA |
| 334 | 14390 Chantilly Crossing | Chantilly | VA |
| 335 | 1185 Ave 65 Infanteria | San Juan | PR |
| 336 | 2655 Gulf To Bay Blvd | Clearwater | FL |
| 337 | 1300 Edwards Ferry Rd | Leesburg | VA |
| 338 | 1021 Oak Forest Ln | Myrtle Beach | SC |
| 339 | 4201 West Wendover Ave | Greensboro | NC |
| 340 | 3102 Plank Rd #600 | Fredericksburg | VA |
| 341 | 3000 Commerce Crossing Rd | Commerce Township | MI |
| 342 | 1320 South Route #59 | Naperville | IL |

Appendix A: List of Warehouses

| Warehouse No. | Address | City | State |
|---------------|--------------------------|-----------------|-------|
| 343 | 35804 Detroit Rd | Avon | OH |
| 344 | 1409 Golden Gate Blvd | Cleveland | OH |
| 345 | 17800 Congress Ave | Boca Raton | FL |
| 346 | 6110 East 86th St | Indianapolis | IN |
| 347 | 9010 Michigan Rd | Indianapolis | IN |
| 348 | 2900 Patriot Blvd | Glenview | IL |
| 349 | 9350 Marshall Dr | Lenexa | KS |
| 351 | 7171 Cypress Lake Dr | Forty Myers | FL |
| 352 | 2431 N Germantown Pkwy | Cordova | TN |
| 353 | 3775 Hacks Cross Rd | Memphis | TN |
| 354 | 6275 Naples Blvd | Naples | FL |
| 356 | 1205 Memorial Pkwy NW | Huntsville | AL |
| 357 | 4901 Gate Pkwy | Jacksonville | FL |
| 358 | 10921 Causeway Blvd | Brandon | FL |
| 359 | 500 Tyvola Rd | Charlotte | NC |
| 360 | 3050 Ashley Town Ctr Dr | Charleston | SC |
| 361 | 1085 Hanes Mall Blvd | Winston-Salem | NC |
| 362 | 3650 Galleria Circle | Hoover | AL |
| 364 | 2399 Rd 2 KM 15.5 | Bayamon | PR |
| 365 | Plaza Centro Mall II | Caguas | PR |
| 367 | 2125 Matthew Township Pk | Matthews | NC |
| 368 | 4200 Rusty Rd | St. Louis | MO |
| 369 | 12221 Blue Valley Pkwy | Overland Park | KS |
| 370 | 1310 E 79th Ave | Merrillville | IN |
| 371 | 505 W Army Trail Rd | Bloomington | IL |
| 372 | 12547 Riverdale Blvd | Coon Rapids | MN |
| 373 | 19040 E Valley View Pkwy | Independence | MO |
| 374 | 45460 Market St | Shelby Township | MI |
| 375 | 241 East Linwood Blvd | Kansas City | MO |
| 376 | 400 Brown Rd | Auburn Hills | MI |
| 378 | 680 S Rand Rd | Lake Zurich | IL |
| 379 | 1100 East Kemper Rd | Springdale | OH |
| 380 | 2746 N Clybourn Ave | Chicago | IL |
| 381 | 7300 S Cicero Ave | Bedford Park | IL |
| 382 | 200 Costco Way | St. Peters | MO |
| 383 | 7311 N Melvina Ave | Niles | IL |
| 386 | 98 Seaboard Ln | Brentwood | TN |
| 387 | 1375 N Meacham Rd | Schaumburg | IL |
| 388 | 1901 W 22nd St | Oak Brook | IL |
| 390 | 13700 Middlebelt Rd | Livonia | MI |
| 391 | 20000 Haggerty Rd | Livonia | MI |

Appendix A: List of Warehouses

| Warehouse No. | Address | City | State |
|---------------|--------------------------|---------------------|-------|
| 403 | 101 Town Center Pkwy | Santee | CA |
| 407 | 6255 E Grant Rd | Tucson | AZ |
| 410 | 12324 Hoxie Ave | Norwalk | CA |
| 411 | 17900 Newhope St | Fountain Valley | CA |
| 412 | 1220 W Foothill Blvd | Azusa | CA |
| 418 | 900 South Harbor Blvd | Fullerton | CA |
| 420 | 2001 East Ventura Blvd | Oxnard | CA |
| 422 | 451 S Airport Blvd | S San Francisco | CA |
| 424 | 2200 E Willow St | Signal Hill | CA |
| 427 | 15255 North Hayden Rd | Scottsdale | AZ |
| 428 | 2207 W Commonwealth | Alhambra | CA |
| 429 | 33961 Doheny Park Rd | San Juan Capistrano | CA |
| 431 | 3901 W Costco Dr | Tucson | AZ |
| 432 | 480 N McKinley St | Corona | CA |
| 436 | 1445 W Elliot Rd | Tempe | AZ |
| 437 | 8810 Tampa Ave | Northridge | CA |
| 438 | 11260 White Rock Rd | Rancho Cordova | CA |
| 439 | 1471 S Havana St | Aurora | CO |
| 440 | 6400 W 92nd Ave | Westminster | CO |
| 441 | 72-800 Dinah Shore Dr | Palm Desert | CA |
| 443 | 7900 W Quincy Ave | Littleton | CO |
| 445 | 22633 Savi Ranch Pkwy | Yorba Linda | CA |
| 447 | 18649 Via Princessa | Santa Clarita | CA |
| 452 | 12350 Carmel Mountain Rd | San Diego | CA |
| 453 | 5101 Business Center Dr | Fairfield | CA |
| 454 | 115 Technology Dr | Irvine | CA |
| 459 | 1345 N Montebello Blvd | Montebello | CA |
| 460 | 895 East H St | Chula Vista | CA |
| 462 | 951 Palomar Airport Blvd | Carlsbad | CA |
| 465 | 4502 East Oak St | Phoenix | AZ |
| 466 | 3911 Hwy 69 | Prescott | AZ |
| 468 | 8686 Park Meadows Ctr Dr | Littleton | CO |
| 469 | 8125 Fletcher Pkwy | La Mesa | CA |
| 471 | 1600 Expo Pkwy | Sacramento | CA |
| 472 | 1339 N Davis Rd | Salinas | CA |
| 474 | 7095 Market Place Dr | Goleta | CA |
| 475 | 1600 El Camino Real | S San Francisco | CA |
| 476 | 2751 Skypark Dr | Torrance | CA |
| 478 | 1099 E Hospitality Ln | San Bernardino | CA |
| 480 | 600 Marshall Rd | Superior | CO |
| 481 | 1415 N Arizona Ave | Gilbert | AZ |

| Warehouse No. | Address | City | State |
|---------------|---------------------------|------------------|-------|
| 483 | 650 Gateway Center Dr | San Diego | CA |
| 484 | 648 East 800 South | Orem | UT |
| 485 | 94-1231 Ka Uka Blvd | Waipahu | HI |
| 486 | 8505 West Gage Blvd | Kennewick | WA |
| 488 | 2345 Fenton Pkwy | San Diego | CA |
| 489 | 5300 Overton Ridge Blvd | Ft. Worth | TX |
| 490 | 19001 N 27th Ave | Phoenix | AZ |
| 644 | 2887 South Market St | Gilbert | AZ |
| 659 | 5901 Redwood Dr | Rohnert Park | CA |
| 660 | 1201 39th SW | Puyallup | WA |
| 661 | 3801 Pelandale Ave | Modesto | CA |
| 662 | 1725 S Burlington Blvd | Burlington | WA |
| 664 | 3800 N Central Expressway | Plano | TX |
| 665 | 1646 W Montebello | Phoenix | AZ |
| 667 | 500 Eubank Blvd SE | Albuquerque | NM |
| 668 | 600 West Arbrook Blvd | Arlington | TX |
| 669 | 2601 E State Hwy 114 | Southlake | TX |
| 670 | 5601 East Sprague Ave | Spokane | WA |
| 672 | 835 North 3050 East | St. George | UT |
| 673 | 791 Marks St | Henderson | NV |
| 674 | 17550 N 79th Ave | Glendale | AZ |
| 676 | 5195 Wadsworth Blvd | Arvada | CO |
| 677 | 1051 Burbank Blvd | Burbank | CA |
| 678 | 11800 4th St | Rancho Cucamonga | CA |
| 679 | 17550 Castelton St | City of Industry | CA |
| 681 | 10401 Research Blvd | Austin | TX |
| 682 | 3031 Killdeer Ave | Albany | OR |
| 685 | 801 South Pavilion Dr | Las Vegas | NV |
| 686 | 9404 Central Ave | Montclair | CA |
| 687 | 525 Alakawa St | Honolulu | HI |
| 688 | 3800 Rosedale Hwy | Bakersfield | CA |
| 690 | 27220 Heather Ridge Rd | Laguna Niguel | CA |
| 691 | 10000 W McDowell Rd | Avondale | AZ |
| 692 | 1255 NE 48th Ave | Hillsboro | OR |
| 693 | 1201 N Loop 1604 East | San Antonio | TX |
| 694 | 1051 Hume Way | Vacaville | CA |
| 735 | 573 West 100 North | W Bountiful | UT |
| 736 | 595 S Galleria Way | Chandler | AZ |
| 737 | 6555 N Decatur Blvd | Las Vegas | NV |
| 738 | 2450 E Beardsley Rd | Phoenix | AZ |
| 742 | 15915 Pines Blvd | Pembroke Pines | FL |

| Warehouse No. | Address | City | State |
|----------------------|--------------------------------|-------------------|--------------|
| 743 | 2855 Jordan Court | Alpharetta | GA |
| 744 | 4901 Wilson Ave | Wyoming | MI |
| 745 | 2330 Hwy 93 N | Kalispell | MT |
| 747 | 24008 Snohomish Woodinville Rd | Woodinville | WA |
| 748 | 5401 Katella Ave | Cypress | CA |
| 749 | 100 Centerton Rd | Mt. Laurel | NJ |
| 760 | 7251 Camino Arroyo | Gilroy | CA |
| 761 | 2051 S Cole Rd | Boise | ID |
| 762 | 1141 West Ave L | Lancaster | CA |
| 764 | 5201 S Intermountain Dr | Murray | UT |
| 765 | 1800 Cavitt Dr | Folsom | CA |
| 768 | 6101 Gateway West Blvd | El Paso | TX |
| 769 | 3560 West Century Blvd | Inglewood | CA |
| 770 | 3656 Wall Ave | South Ogden | UT |
| 771 | 7000 Auburn Blvd | Citrus Heights | CA |
| 772 | 6720 NE 84th St | Vancouver | WA |
| 773 | 355 East Neider Ave | Coeur D'Alene | ID |
| 774 | 250 N Randall Rd | Lake in the Hills | IL |
| 775 | 12155 Tech Center Dr | Poway | CA |
| 777 | 101 N Beach Blvd | La Habra | CA |
| 778 | 43621 Pacific Commons Blvd | Fremont | CA |
| 779 | 999 N Elmhurst Rd | Mt. Prospect | IL |
| 780 | 75 Freshwater Blvd | Enfield | CT |
| 781 | 1130 Broadway | Chula Vista | CA |
| 782 | 2955 N Tegner Rd | Turlock | CA |
| 783 | 12011 Technology Dr | Eden Prairie | MN |
| 786 | 6700 Whitmore Lake Rd | Brighton | MI |
| 788 | 7205 Mills Civic Pkwy | West Des Moines | IA |

APPENDIX B

REFRIGERANT COMPLIANCE MANAGEMENT PLAN

Costco Wholesale Corporation

This Refrigerant Compliance Management Plan (**CMP**) was developed to promote and monitor Costco's compliance with Section 608 of the Clean Air Act and implementing regulations, the purpose of which is "to reduce emissions of class I and class II refrigerants and their substitutes to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the service, maintenance, repair and disposal of appliances" 40 C.F.R. § 82.150(a). This CMP establishes policies and procedures to direct Costco's use and maintenance of regulated refrigerants and refrigeration equipment. This CMP applies to appliances that contain 50 or more pounds of class II refrigerants (**regulated refrigeration equipment**) at Costco warehouses in the United States. If any general statements as to the purpose or policy of this CMP conflict with any of the specific requirements or directives in this CMP, the specific requirements or directives shall control.

A. POLICY

Costco is committed to providing a safe workplace and complying with all environmental regulatory requirements. Costco does not currently use class I refrigerants. Costco shall, in compliance with the policies and procedures set forth in this CMP, implement management practices related to use of refrigerants and maintenance and repair of regulated refrigerant equipment, and monitor and update an electronic data management system in order to track compliance with applicable regulations.

B. ORGANIZATION AND OVERSIGHT

1. Purpose

To establish an organizational system for implementing the policies and procedures in this CMP and to describe the responsibilities of personnel responsible for implementing this CMP, and to preserve warehouse autonomy while maintaining company-wide consistency by allowing for corporate oversight and verification of compliance.

2. General Organizational Structure

Costco employees at the individual warehouse and corporate levels have specific responsibilities related to the implementation of this CMP. The main personnel positions responsible for implementing the provisions of this CMP are the Warehouse Refrigerant Representatives and the Refrigerant Compliance Supervisors. Specific responsibilities are described in the subsections below. Costco uses the *Verisae* data management system (**Verisae system**), an electronic data management system, to track information associated with its refrigerant systems at all warehouses that use regulated refrigerant equipment in the United States. This system will be utilized by Costco employees, as discussed below, to implement this CMP.

3. Warehouse Refrigerant Representative

Costco shall designate one employee in each warehouse subject to this CMP as the “**Warehouse Refrigerant Representative.**” Warehouse Refrigerant Representatives are responsible for monitoring individual contractor compliance with electronic data entry requirements set forth in Section G (*Verisae* system). Specific duties of the Warehouse Refrigerant Representative include:

- Using and understanding the *Verisae* system and populating reports;
- Assisting the Refrigerant Compliance Supervisors (as defined in Section B.4 below) as necessary;
- Helping contractors to understand and use the *Verisae* system to track repairs of all regulated refrigeration equipment;
- For those Warehouses that pay contractors, monitoring whether contractors have uploaded required leak repair data into the *Verisae* system prior to Costco’s payment of invoices for the associated work;
- Monitoring the *Verisae* system data entries;
- Maintaining hard copies of regulated refrigeration equipment service records, as discussed further in Section G;
- Assisting the Refrigerant Compliance Supervisors to investigate and evaluate any compliance issues with this CMP.

4. Refrigerant Compliance Supervisor

Costco shall designate two or more persons located at Costco Corporate Headquarters in Issaquah, Washington, to serve as Refrigerant Compliance Supervisors (each, an **RCS**, and together, **RCSs**). At least one RCS will be a member of Costco’s Energy Department (**RCS – Energy**), and at least one RCS will be a member of Costco’s Purchasing Department (**RCS – Purchasing**). The RCSs are responsible for overseeing individual warehouse and contractor compliance with this CMP as well as coordinating U.S. company-wide responses to address noncompliance. Specific duties of the RCSs include:

- Using and understanding the *Verisae* system and populating reports;
- Reviewing notices of leaks and noncompliance (RCS – Energy) and ensuring appropriate corrective actions are taken including, if necessary, initiating (with Costco’s Legal Department) written notice to EPA (RCS – Purchasing);
- For those Warehouses for which personnel at Costco’s Corporate Headquarters pay invoices from contractors, monitoring whether contractors have uploaded required

leak repair data into the *Verisae* system prior to Costco's payment of invoices for the associated work;

- Uploading and maintaining the *Verisae* system inventory of regulated refrigeration equipment (RCS – Energy);
- Monitoring the *Verisae* system to identify leaks that require repair, and notifying the appropriate Warehouse Refrigerant Representative if a leak is not repaired within seven (7) days in advance of the regulatory deadline (RCS – Energy); coordinating leak investigations and determining appropriate corrective actions (RCS – Purchasing); preparing written report regarding leak incidents (RCS – Purchasing);
- Periodically compiling reports using data from the *Verisae* system in order to determine:
 - which twenty-five (25) warehouses have the highest refrigerant emissions;
 - which warehouses have had no refrigerant added to systems in the past twelve (12) months;
 - the average timeframe within which each independent contractor completes necessary repairs; and
 - which individual pieces of regulated refrigeration equipment were repaired more than three times in the previous twelve (12) months.

(reports prepared by RCS – Energy and reviewed by RCS – Purchasing)

- Monitoring the *Verisae* system for compliance issues related to refrigerant emissions, contractor performance, or chronically malfunctioning equipment and contacting the appropriate Warehouse Refrigerant Representative(s) or contractor to determine the cause of the problem and to design and implement necessary corrective actions (RCS – Purchasing);
- Working with Costco's Legal Department to coordinate the addition of any new requirements to this CMP (RCS – Energy and RCS – Purchasing);
- Monitoring and updating employee training programs (RCS – Energy);
- Ensuring Costco corporate personnel remain apprised of obligations under this Consent Decree (RCS – Purchasing).

5. Costco Warehouse Managers

Individual Costco warehouse managers are responsible for monitoring compliance with this CMP as well as applicable regulations.

6. Independent Contractors

Costco uses independent contractors to perform necessary refrigerant installation, maintenance, and repair work. Contractors shall provide Costco with only EPA-certified technicians, as discussed in Section F2 below. Contractors must properly use the *Verisae* system to report repairs of regulated refrigerant equipment or risk nonpayment of invoices.

C. ACCOUNTABILITY AND RESPONSIBILITY

1. Purpose

To create procedures to help achieve company-wide compliance with this CMP.

2. Internal Accountability

The RCSs are required to meet periodically (at least every six (6) months) with the Legal Department to report and address issues regarding company-wide compliance with this CMP, including identified amendments to environmental requirements and updates to employee training programs, as well as any identified noncompliance at individual warehouses.

3. Third-Party Accountability

In order to foster accountability for third-party actions, Costco shall seek to hold individuals directly responsible for accurate leak reporting and repair, *i.e.*, independent contractors, responsible for actions or failures to act that lead to assessment of civil and administrative penalties, and/or material violations of this CMP.

D. ENVIRONMENTAL REQUIREMENTS

1. Purpose

To endeavor to ensure Costco remains apprised of any regulatory developments affecting this CMP and has procedures to update this CMP.

2. Environmental Review

An attorney in Costco's Legal Department shall be tasked with monitoring legislation and rulemaking activity regulated appliances and shall report new requirements to Warehouse Refrigerant Representatives and the RCSs as developed. The Costco Legal Department shall also work with the RCSs to incorporate new requirements into this CMP and shall distribute the updated document, along with a summary of regulatory changes, to employees at individual warehouse and corporate levels who are involved with the implementation of this CMP, as well as third-party contractors involved in the maintenance and repair of regulated refrigeration equipment. The RCS – Energy is also responsible for ensuring that training programs identified in Section H are updated to reflect changes in requirements.

E. ASSESSMENT, PREVENTION AND CONTROL

1. Purpose

To establish the following management practices (**MPs**) and evaluation procedures to seek to prevent or control reasonably foreseeable releases of refrigerants and minimize other risks of noncompliance with applicable refrigerant regulations.

2. Management Practices

The following MPs shall apply to Costco's use of class II refrigerants, maintenance of regulated refrigeration equipment, and interactions between Costco and independent contractors that service Costco's regulated refrigeration equipment:

- No knowing release or venting of any regulated refrigerant to the atmosphere shall be made.
- Costco's regulated refrigerant use shall be managed pursuant to EPA regulations and any other applicable federal requirements, including recordkeeping and repair requirements in 40 C.F.R. Part 82, Subpart F.
- Use, maintenance, repair, and replacement of all regulated refrigeration equipment shall also be conducted pursuant to the above-mentioned regulations. Any apparent violation of such regulations shall be investigated and reported pursuant to procedures outlined in Section F of this CMP.
- All contractors responsible for maintenance and repair of regulated refrigeration equipment shall be certified according to EPA requirements in 40 C.F.R. § 82.161, and as discussed in more detail in Section F.2 below.

3. Contractor Evaluations

The RCS – Purchasing is responsible for facilitating evaluations of independent contractors' compliance with applicable standards and regulations in at least five (5) warehouses randomly selected annually. All evaluation results shall be documented in a report to the appropriate Warehouse Refrigerant Representative, and the RCS – Purchasing shall further investigate any negative results to determine if corrective actions are necessary. The RCS – Purchasing is also responsible for initiating, with the assistance of the appropriate Warehouse Refrigerant Representative, evaluation of a contractor when *Verisae* system reports run pursuant to Section B.4, or other pertinent information, demonstrates the contractor's frequent noncompliance with this CMP.

4. Warehouse Audits

Costco warehouse operations auditors will perform audits of all Costco warehouses subject to this CMP, in order to assess compliance with this CMP and all applicable federal refrigerant regulations. Costco shall audit each warehouse subject to this CMP annually. Each warehouse

that is not audited within one year of the last audit shall be audited within the 90 days following the one-year anniversary of the prior audit. Auditors must ensure that each warehouse has identified personnel, including the Warehouse Refrigerant Representative, that are sufficiently trained to comply with the Warehouse Refrigerant Representative's obligations as described in this CMP, and confirm that independent contractors are required to upload data to the *Verisae* system prior to Costco's payment of invoices for the associated work. Audit results shall be reported to the RCSs and the appropriate Warehouse Refrigerant Representative, and any reports of noncompliance shall be addressed according to the procedures identified in Section F.

F. SYSTEM MAINTENANCE

1. Purpose

To detail which persons may perform refrigerant services and maintenance.

2. Refrigerant Technicians

EPA requires certification testing for any person conducting service, maintenance, repair, or recovery work on a refrigerant system. Costco requires that only certified technicians perform such activities. Technicians must have a certification card showing training in an EPA-approved program. In the event of an EPA inspection, technicians must be able to do the following:

- Present their certification cards;
- Recite the relevant recovery vacuum levels for the refrigerants currently in use;
- State the leak trigger rates for the over 50 pound EPA equipment classifications;
- Demonstrate the proper use of a refrigerant recovery system, confirm that leak tests are performed on recovery units, and properly calibrate gauges.

G. LEAK REPAIR, INVESTIGATIONS, AND REPORTING

1. Purpose

To promptly address, investigate, and report leaks and to establish procedures relating to leaks.

2. Leak Repair

All regulated commercial refrigeration systems exhibiting an annual leak rate in excess of 35% and all regulated comfort cooling appliances exhibiting an annual leak rate in excess of 15% shall be repaired within 30 days of leak detection as required by EPA regulations. Repairs will be performed by certified technicians. A leak is considered to be repaired if the leak rate is reduced below the 35% threshold. Leak repairs must follow all EPA-approved procedures, including refrigerant evacuation and recovery/recycling, and verification.

If a commercial refrigeration appliance with an annual leak rate in excess of 35% or a comfort cooling appliance with an annual leak rate in excess of 15% cannot be repaired within 30 days of leak detection, then the Warehouse Refrigerant Representative and RCS – Purchasing will determine appropriate actions.

3. Leak Investigations

Warehouse Refrigerant Representatives are required, upon request from an RCS, to investigate any incident of apparent non-compliance with applicable refrigerant regulations, such as failure to repair leaks in regulated refrigeration equipment within 30 days. The Warehouse Refrigerant Representative and RCS – Purchasing will coordinate an investigation to determine the root cause of the incident, corrective actions taken, and any recommended changes in procedures, policies, or personnel in order to minimize the risk of continued incidents, and the RCS – Purchasing will document same in a written report. Costco’s Legal Department will review each investigation report. Individual warehouse investigation reports will be considered cumulatively during annual audits.

4. Leak Reporting

Contractors shall record specific data regarding the equipment and repairs on Service Record forms and enter such information into the *Verisae* system as described in Section H, in order to track compliance with regulations, and equipment and contractor performance.

H. RECORDKEEPING

1. Purpose

To comply with EPA regulations requiring owners and operators of refrigeration equipment containing Class II refrigerants to maintain records. EPA may request reports documenting refrigerant usage, service, maintenance, and disposal for the past three years. Costco’s CMP ensures compliance with these requirements by establishing record-keeping procedures through the use of the *Verisae* system.

2. Leak Monitoring

If a regulated refrigeration equipment leak is identified, the independent contractor shall enter the information into the *Verisae* system, including all of the information on the attached “Refrigerant Tracking Form 1C.” The *Verisae* system shall be the primary method for documenting leaks and repair events. If contractors provide hard-copy records to Costco regarding leaks and repair events, the Warehouse Refrigerant Representative shall keep such hard copies on-site indefinitely.

3. General Monitoring

Costco will also monitor its regulated refrigerant use and compliance with applicable regulations through the *Verisae* system. Records will be maintained for at least 3 years after the termination

of the Consent Decree. Responsibilities regarding monitoring and maintenance of the *Verisae* system are as follows:

- Contractors are responsible for uploading data regarding equipment leaks and repairs to the *Verisae* system, to facilitate tracking of applicable leak rates and repair deadlines. It is Costco's policy to withhold payment of contractor invoices until the contractor uploads the required data.
- The RCS – Energy is responsible for uploading and accurately maintaining the *Verisae* system inventory of regulated refrigeration equipment, which includes comfort cooling, commercial refrigeration, industrial process refrigeration, and any other regulated refrigeration equipment. The inventory will include location and identification information for all regulated refrigeration equipment. The RCS – Energy is also responsible for uploading and accurately maintaining the *Verisae* system inventory regarding refrigerant types and quantities for each piece of regulated refrigeration equipment.
- Warehouse Refrigerant Representatives shall endeavor to ensure that contractors understand and comply with *Verisae* system data-entry requirements, and must monitor all *Verisae* system data entries and address upcoming repair deadlines noted in the *Verisae* system.
- The RCS – Energy is responsible for notifying individual warehouses of leaks identified in the *Verisae* system that are not repaired within seven (7) days before the regulatory deadline.
- The RCS – Purchasing will work with contractors and the Warehouse Refrigerant Representative to address and effectuate such repairs prior to the regulatory deadline.
- The RCS – Energy is responsible for running various system-wide reports described above in Section B.2 in order to monitor warehouse, contractor and equipment performance.
- Warehouse Refrigerant Representatives and the RCSs are responsible for understanding how to access and interpret the *Verisae* system, and how to design and run necessary reports.

I. TRAINING

1. Purpose

To develop training programs for employees and ensure that all relevant personnel are properly trained to implement the requirements of this CMP.

2. Available Training

Costco will develop and implement training programs as follows:

- Refrigerant Tracking (*Verisae*)
- Legal Requirements for Managing Refrigeration

Individual training records shall be maintained and examined as part of the contractor evaluations and warehouse audits described in Section E.

The RCSs shall be responsible for revising training programs to address regulatory changes, as described in Section D, as well as personnel and compliance issues identified through individual evaluations, audits, and incident investigations.

J. ENVIRONMENTAL PLANNING AND ORGANIZATIONAL DECISION-MAKING

1. Purpose

To accomplish integration of environmental considerations with Costco's larger corporate governance process.

2. Corporate Environmental Planning

Environmental planning related to this CMP and Costco's compliance with applicable refrigerant management regulations shall, where practicable, be integrated into Costco's overall corporate decision-making process. For example, the RCS – Purchasing must ensure that corporate personnel responsible for capital improvements are aware of Costco's obligations under this CMP, the applicable regulations, and any applicable agreements or consent decrees, as well as specific information related to Costco's use of regulated refrigerants, including cost and phase-out dates.

K. PROGRAM EVALUATION

1. Purpose

To develop procedures for evaluating and improving this CMP.

2. Evaluation Requirements

In order to ensure that Costco's implementation of this CMP is effectively achieving stated goals, the RCSs will communicate with Warehouse Refrigerant Representatives to evaluate implementation of this CMP and discuss and adopt improvements to address identified weaknesses in the program.

L. APPLICABLE FEDERAL RULES AND REGULATIONS

1. Purpose

To identify relevant federal regulations applicable to refrigerant systems.

2. 40 C.F.R. Part 82

40 C.F.R Part 82 governs the use of ozone-depleting substances and therefore applies to the use of refrigerants. The primary requirements of 40 C.F.R Part 82 are:

- To maximize recycling of ozone-depleting compounds, such as CFCs and HCFCs during the servicing and disposal of refrigeration equipment.
- To prohibit any knowing releases of refrigerants during maintenance, service, repair, or disposal.
- To set certification requirements for the recovery and recycling of refrigeration equipment.
- To ensure that refrigerants are sold only to certified technicians and appliance manufacturers.
- To require persons repairing or disposing of refrigeration equipment to certify to EPA that they have complied with the requirements of the rule.
- To repair any regulated commercial refrigeration system with an annual leak rate in excess of 35%, and any regulated comfort cooling appliance with an annual leak rate in excess of 15%, within 30 days of leak detection as required by EPA regulations.
- To establish safe disposal practices for refrigerants.
- To set certification requirements for technicians and reclaimers.