

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

| | | |
|--------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 1:15-cv-1196 |
| |) | Hon. James Shadid |
| ENVIRO-SAFE REFRIGERANTS, INC. |) | |
| |) | |
| Defendant. |) | |
| |) | |
| _____ |) | |

**UNITED STATES OF AMERICA’S
NOTICE OF LODGING OF PROPOSED CONSENT DECREE**

Plaintiff United States of America by and through its undersigned attorneys, respectfully lodges the attached proposed Consent Decree with this Court.

1. Plaintiff filed a complaint in this matter against Enviro-Safe Refrigerants, Inc. (“Enviro-Safe” or “Defendant”) pursuant to Section 113(b) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(b), to obtain injunctive relief and civil penalties from Defendant for violations of Section 612 of the CAA, 42 U.S.C. § 7671k, and the implementing regulations at: 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184 (Significant New Alternatives Policy Program).
2. The parties have entered into a proposed Consent Decree which has been signed by authorized representatives of the United States and Defendant.
3. The Court should not enter the attached proposed Consent Decree until the public has had an opportunity to comment and the United States has addressed those comments, if any.

4. In accordance with 28 C.F.R. § 50.7 (1996), following the lodging of the proposed Consent Decree, the United States Department of Justice will publish notice of the Consent Decree in the Federal Register to commence a 30-day comment period.

5. If the United States receives any public comments, it will consider and file with the Court any written comments on the proposed Consent Decree along with the United States' response to those comments.

6. The United States may withdraw or withhold its consent to the proposed Consent Decree if the comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest.

7. At the conclusion of the public comment period, the United States will either: (1) notify the Court of its withdrawal of the proposed Consent Decree, or (2) respond to any comments received and move this Court to enter the proposed Consent Decree.

8. This commenting procedure is also identified and articulated in the proposed Consent Decree itself. See Consent Decree, Paragraph No. 65.

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Wherefore, the United States respectfully gives notice of the lodging of the proposed Consent Decree.

Respectfully submitted,

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

s/ Jeffrey A. Spector
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77 West Jackson Blvd. (C-14J)
Chicago, IL 60604-3590

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *United States of America's Notice of Lodging of Proposed Consent Decree* was served on this date by electronic mail upon the following individual:

Gary A. Peters
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, MI 48067
gpeters@HowardandHoward.com

5/14/15

Date

s/ Jeffrey A. Spector

Jeffrey A. Spector

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

| | | |
|---------------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | |
| ENVIRO-SAFE REFRIGERANTS, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

CONSENT DECREE

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I. INTRODUCTION

A. Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint against Defendant Enviro-Safe Refrigerants, Inc. (“Enviro-Safe” or “Defendant”) concurrently with the lodging of this Consent Decree;

B. Enviro-Safe owns a refrigerant formulating plant and office and sales center located in Pekin, Illinois;

C. The Complaint alleges that Enviro-Safe violated and continues to violate Section 612 of the Clean Air Act (“CAA”), 42 U.S.C. § 7671k, and the implementing regulations at 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184 (Significant New Alternatives Policy (“SNAP”) Program);

D. EPA issued a finding of violation (“FOV”) to Enviro-Safe on April 29, 2013 (re-issued on June 11, 2013) in which it alleged that Enviro-Safe introduced substitutes for ozone-depleting substances into interstate commerce, while failing to comply with the SNAP requirements under 40 C.F.R. §§ 82.174(a) and 82.176(a)

E. Enviro-Safe has denied and continues to deny, all violations alleged in the FOV and Complaint;

F. Enviro-Safe does not admit any liability to the United States arising out of the transactions or occurrences alleged in the FOV and the Complaint.

G. The United States and Enviro-Safe (“the Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. 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 CAA Section 113(b), 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendant resides within this District and the alleged violations that constitute the basis of this Complaint occurred and continue to occur within this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this District.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 612 of the CAA, 42 U.S.C. § 7671k.

3. Notice of the commencement of this action shall be given to the State of Illinois as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

III. APPLICABILITY

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

5. No transfer of ownership or operation of the Enviro-Safe's Facilities shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree.

7. In any action to enforce this Consent Decree, Defendant shall 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.

IV. DEFINITIONS

8. Terms used in this Consent decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree;
- c. "Day" shall mean 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 shall run until the close of business of the next business day;
- d. "Date of Lodging" shall mean the day on which this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Central

District of Illinois, Peoria Division, before the opportunity for public comment referenced in Section XIX;

- e. “Defendant” shall mean Enviro-Safe Refrigerants, Inc.;
- f. “Domestic Refrigerant Product” shall mean any refrigerant product marketed for or sold in interstate commerce in the United States;
- g. “EPA” shall mean the United States Environmental Protection Agency;
- h. “Effective Date” shall have the definition provided in Section XV;
- i. “Facilities” shall mean Defendant’s refrigerant storage and processing plant and office and sales center located in Pekin, Illinois;
- j. “Finding of Violation” or “FOV” shall mean the Finding of Violation issued by EPA Region 5 dated April 29, 2013 (EPA-5-13-IL-30) and the revised Finding of Violation dated June 11, 2013, collectively, copies of which are attached at Appendix B;
- k. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- l. “Parties” shall mean the United States and Defendant;
- m. “Section” shall mean a portion of this Decree identified by a Roman numeral; and
- n. “United States” shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

9. Defendant shall pay the sum of \$300,000 as a civil penalty. Payment shall be made as follows: (1) Defendant shall pay \$75,000 on or before June 1, 2015; (2) shall pay an

additional \$113,000 on or before December 1, 2015; and (3) Defendant shall pay the remaining \$112,000 on or before December 1, 2016. Each payment shall be paid together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

10. Defendant shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Central District of Illinois after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Randy Price
400 Margaret St.
Pekin, IL 61554
(309) 346-1110
envirosafe2000@hotmail.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices). At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice shall reference the CDCS Number and DOJ case number 90-5-2-1-11014.

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

VI. COMPLIANCE REQUIREMENTS

12. As of the Effective Date, Defendant shall not manufacture, market, advertise, sell, or distribute any Domestic Refrigerant Product as a replacement for an ozone-depleting substance (“ODS”), unless and until an initial notification for such product has been submitted to the EPA SNAP Program pursuant to 40 C.F.R. § 82.176(a) and such product has been approved by EPA for distribution in commerce.

VII. ADDITIONAL INJUNCTIVE RELIEF

13. As of the Effective Date, Defendant shall not name any Domestic Refrigerant Product using a variation of ODS refrigerant nomenclature, unless that product is an EPA-approved replacement for such ODS, and shall rename any such existing products in accordance with this paragraph (*e.g.*, R-12 is an ODS; Defendant shall not sell a product named “ES 12a,” regardless of whether Defendant intends to sell ES 12a as a replacement for R-12 or some other refrigerant).

14. As of the Effective Date, Defendant shall remove any reference to “CFC,” “HCFC,” or any specific ODS from the label, website (including eBay and other on-line sales platforms), or other technical and/or marketing material for any Domestic Refrigerant Product, unless that product is an EPA-approved replacement for such ODS.

15. As of the Effective Date, for any Domestic Refrigerant Product that has been approved by EPA as a replacement for an ODS with “use restrictions” (as defined at 40 C.F.R. 82.172), Defendant shall identify such use restrictions on the Domestic Refrigerant Product label,

website, and other marketing materials. Defendant shall not market such Domestic Refrigerant Product for uses outside the use restrictions or in sizes or formats incompatible with the use restrictions.

16. As of the Effective Date, for any flammable Domestic Refrigerant Product other than R-134a Replacement, Defendant shall state on the Domestic Refrigerant Product label, website, and other marketing materials that such product is “flammable to an open flame or spark” and “not intended for use in systems designed for non-flammable refrigerants.”

17. For R-134a Replacement, as of the Effective Date, Defendant shall state on the label, website, and other marketing materials: “flammable to an open flame or spark” and “proceed with caution if used in systems designed for non-flammable refrigerants.”

18. Within 15 days of the Effective Date, Defendant shall notify by mail all known past customers of ES 12a, ES 22a, and ES 502a of the potential safety hazards associated with such products. A copy of such notification letter is attached to this Consent Decree as Exhibit A.

19. As of the Effective Date, Defendant shall segregate its international sales of hydrocarbon-based refrigerants from sales of Domestic Refrigerant Products through use of separate sales platforms (*i.e.* separate web portals accessed through a single web site).

VIII. STIPULATED PENALTIES

20. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this

Decree, according to all applicable requirements of this Decree, and within the specified time schedules established by or approved under this Decree.

21. Late Payment of Civil Penalty. If Defendant fails to pay any installment of the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

22. SNAP Authorization. If Defendant violates Section VI of this Decree (Compliance Requirements), Defendant shall pay a stipulated penalty of \$20,000 per violation per Day for each such violation. The stipulated penalties imposed by this paragraph do not apply to R-134a Replacement.

23. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in paragraphs 13-19:

| <u>Penalty Per Violation Per day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500..... | 1st through 14th day |
| \$1,000..... | 15th through 30th day |
| \$2,500..... | 31st day and beyond |

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

25. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

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

27. Stipulated penalties shall continue to accrue as provided in Paragraph 24, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 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 shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

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

29. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall

be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

30. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of CAA Section 612, 42 U.S.C. § 7671k, and/or its implementing regulations, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

31. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

32. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of

when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; 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; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

33. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

34. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

35. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 31 and 32. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

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

37. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30

Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

38. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

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

40. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

42. Standard of Review. Except as otherwise provided in this Consent Decree, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

43. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 27. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

44. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

45. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

46. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

47. 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 laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain

documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the Finding of Violation from the date those claims accrued through the Date of Lodging.

49. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 48. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 48. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

50. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 48.

51. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. 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, or with any other provisions of federal, state, or local laws, regulations, or permits.

52. 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.

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

XIII. COSTS

54. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

55. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescasemanagement.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11014

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-11014

As to EPA: Air and Radiation Division
EPA Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, IL 60604
Attn: Compliance Tracker

and

Office of Regional Counsel
EPA Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604

For courtesy purposes only, electronic copies to:
gross.louise@epa.gov
owens.katharine@epa.gov

As to Defendant: Randy Price
400 Margaret St.
Pekin, IL 61554

56. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

57. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

58. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

59. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

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

61. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 42, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

62. After Defendant has completed the requirements of Section VI (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of five years and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

64. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until at least 30 Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

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

XX. SIGNATORIES/SERVICE

66. Each undersigned representative 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 to this document.

67. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant 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 set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. The

Parties agree that the Defendant need not file an answer, pleading, or motion in response to the Complaint in this action unless: (i) the United States notifies the Defendant in writing that it no longer supports entry of this Consent Decree; or (ii) the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

68. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

69. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

70. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” -- customer letters.

“Appendix B” – Findings of Violation

Dated and entered this __ day of _____, 2015

UNITED STATES DISTRICT JUDGE

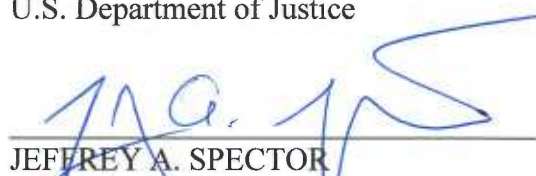
Signature page for Consent Decree in *United States v. Enviro-Safe Refrigerants, Inc.* (C.D. Ill.)

FOR THE UNITED STATES OF AMERICA:

Date


THOMAS A. MARIANI, JR.

Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice


JEFFREY A. SPECTOR

Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

JAMES A. LEWIS
United States Attorney
Central District of Illinois
GERARD BROST
Assistant United States Attorney
Central District of Illinois
One Technology Plaza
211 Fulton Street, Suite 400
Peoria, IL 61602

Signature page for Consent Decree in *United States v. Enviro-Safe Refrigerants, Inc.* (C.D. Ill.)

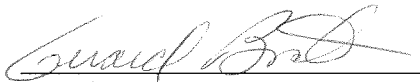
FOR THE UNITED STATES OF AMERICA:

April 20, 2015
Date

THOMAS A. MARIANI, JR.
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

JEFFREY A. SPECTOR
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

JAMES A. LEWIS
United States Attorney
Central District of Illinois



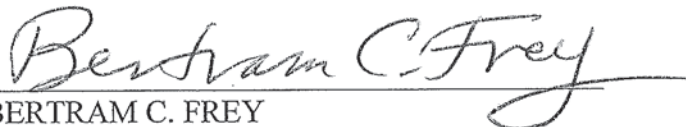
GERARD BROST
Assistant United States Attorney
Central District of Illinois
One Technology Plaza
211 Fulton Street, Suite 400
Peoria, IL 61602

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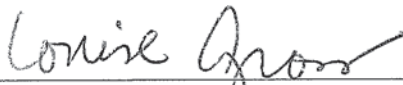
FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:



SUSAN HEDMAN
Regional Administrator
U.S. Environmental Protection Agency, Region 5



BERTRAM C. FREY
Acting Regional Counsel
U.S. Environmental Protection Agency, Region 5

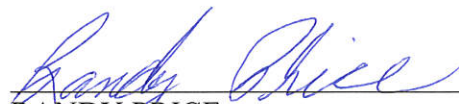


LOUISE GROSS
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Signature page for Consent Decree in *United States v. Enviro-Safe Refrigerants, Inc.* (C.D. Ill.)

FOR ENVIRO-SAFE REFRIGERANTS, INC:

4-08-15
Date



RANDY PRICE
400 Margaret Street
Pekin, IL 61554

ATTACHMENT A

Dear Enviro-Safe Customer:

We are sending you this letter because you have been identified as a past purchaser of ES-12a, ES-22a, or ES-502a. The United States Environmental Protection Agency (EPA) has requested that I send you this letter to notify you of EPA's concerns regarding potential safety hazards and legal restrictions regarding the use of *flammable* hydrocarbon refrigerants as a substitute refrigerant or retrofit for *non-flammable* ozone depleting refrigerants such as R-12, R-22, and R-502. EPA is concerned that the use of flammable hydrocarbon refrigerants as a direct replacement or retrofit for non-flammable refrigerants may create a risk of fire or explosion.

Additionally, EPA asks that we advise you that there are certain applicable legal restrictions to the use of flammable hydrocarbon replacement refrigerants. Many older refrigerants, including R-12, R-22, and R-502, are ozone depleting substances (ODS). ODS are being phased out of production and importation because they deplete the Earth's stratospheric ozone layer. As part of the United States' transition away from ODS, EPA's Significant New Alternatives Policy (SNAP) Program evaluates and approves substitute refrigerants so that they can safely and legally replace ODS. EPA evaluates these potential substitute refrigerants according to health, safety, and environmental criteria described in the SNAP regulations. EPA's SNAP Program has not approved ES-12a, ES-22a, or ES-502a as an ODS substitute. Where ODS substitutes are approved by SNAP, they are strictly limited to approved use conditions.

EPA has informed us that if you sell, distribute, manufacture, or market a direct ODS substitute without SNAP approval or outside any SNAP Program-approved uses, you are doing so in violation of SNAP Regulations and the Clean Air Act. EPA has also recommended more generally that you use caution when using any flammable hydrocarbon refrigerants in appliances not specifically designed for their use, and likewise to advise any of your customers regarding the potential risks associated with such use.

Additional information on these issues may be found at <http://www.epa.gov/ozone/snap/>.

Thank you,

Julie Price
President, Enviro-Safe Refrigerants, Inc.

ATTACHMENT B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 11 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Julie Price
Enviro-Safe Refrigerants, Inc.
400 Margaret Street
Pekin, Illinois 61554

Dear Ms. Price:


The U.S. Environmental Protection Agency is reissuing the enclosed Finding of Violation (FOV) to Enviro-Safe Refrigerants, Inc. (you). We find that you have violated the Clean Air Act, 42 U.S.C. § 7413(a) (the CAA), specifically the Significant New Alternative Policy Program regulations at 40 C.F.R. Part 82, Subpart G. EPA promulgated these regulations under Section 608 of the CAA, 42 U.S.C. § 7671g.

We are reissuing the enclosed FOV, originally issued to Enviro-Safe on April 29, 2013, to eliminate citations to any information for which Enviro-Safe has asserted Confidential Business Information (CBI) claims.

We have several enforcement options under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3). These include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

The enclosed FOV is for your record only and does not require action on your part. The EPA contact in this matter is Katie Owens. You may call her at (312) 886-6097 if you have questions.

Sincerely,


George T. Czerniak
Director
Air and Radiation Division

Enclosure: SBREFA fact sheet

cc: Ray Pilapil, IEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)

Enviro-Safe Refrigerants, Inc.)
Pekin, Illinois)

Proceedings Pursuant to)
the Clean Air Act)
42 U.S.C. § 7401 *et seq.*)

FINDING OF VIOLATION

EPA-5-13-IL-30

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Enviro-Safe Refrigerants, Inc. (Enviro-Safe) is violating the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* Specifically, Enviro-Safe is violating provisions of the “Significant New Alternatives Policy” (SNAP) program regulations at 40 C.F.R. Part 82, Subpart G, as follows.

Statutory and Regulatory Background

1. Section 612 of the CAA, 42 U.S.C. § 7671k, authorizes EPA to identify, review and restrict the use of substitutes for “Class I” and “Class II” ozone-depleting substances (ODS).
2. Under Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), Congress identified “HCFC-22” as a “Class II” ODS.
3. Section 612(a) of the CAA, 42 U.S.C. § 7671k(a), requires that, to the maximum extent practicable, Class I and Class II ODS be replaced by chemicals, products substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.
4. Under Section 612(c) of the CAA, 42 U.S.C. § 7671k(c), EPA promulgated the SNAP program regulations at 40 C.F.R. Part 82, Subpart G. These regulations establish standards and requirements for the use of Class I and Class II substances used in specific major industrial sectors where a substitute is used to replace an ODS including, among other things, refrigeration and air conditioning. *See 59 Fed. Reg.* 13044 (March 18, 1994).
5. Among the purposes of the SNAP regulations is to provide for safe alternatives to ODS. 40 C.F.R. § 82.170(a).
6. Among the objectives of the SNAP program is to identify substitutes for ODS that present lower overall risks to human health and the environment relative to the Class I and Class II substances being replaced. 40 C.F.R. § 82.170(b).

7. Under the SNAP regulations at 40 C.F.R. § 82.176(a), any producer of a new substitute must submit a notice of intent to introduce a new substitute into interstate commerce 90 days prior to such introduction.
8. Under the SNAP regulations at 40 C.F.R. § 82.174(a), no person may introduce a new substitute into interstate commerce before the expiration of 90 days after a notice is initially submitted to EPA under 40 C.F.R. § 82.176(a).
9. Under the SNAP regulations at 40 C.F.R. § 82.172, a “producer” is defined as “any person who manufacturers, formulates, or otherwise creates a substitute in its final form for distribution or use in interstate commerce.”
10. Under the SNAP regulations at 40 C.F.R. § 82.172, “substitute or alternative means” is defined as “any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II compound.”
11. Under the SNAP regulations at 40 C.F.R. § 82.172, “use” is defined as “any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses.”
12. Under the SNAP regulations at 40 C.F.R. § 82.172, “person” is defined to include a corporation.
13. Under the SNAP regulations, a substitute is exempt from the notice of intent requirement of 40 C.F.R. § 82.176(a) as a so-called “second generation replacement” only if it is designed to replace a non-ODS substitute that EPA has previously approved and if the original Class I or Class II ODS refrigerant is no longer being used or is no longer available for use. *See 59 Fed. Reg.* 13044, 13052.
14. Under the SNAP regulations, it is illegal to use a hydrocarbon refrigerant as a substitute for a Class I or Class II ODS refrigerant for any end use other than industrial process refrigeration systems, or retail food refrigerators and freezers (stand-alone units only). *See 69 Fed. Reg.* 11946, 11952 (March 12, 2004), and *76 Fed. Reg.* 78832 (December 20, 2011).

Factual Background

15. Enviro-Safe is a corporation with a place of business at 400 Margaret Street, Pekin, Illinois (the Pekin facility).
16. At the Pekin facility, Enviro-Safe sells and distributes a product it refers to as “Enviro-Safe 22a” or “ES 22a.”

17. ES 22a is a hydrocarbon.
18. Enviro-Safe's website states that Enviro-Safe Refrigerant "contains a fresh pine scent which is added during the bottling process."
19. The Material Safety Data Sheet for ES 22a states that "flammable vapor may form if allowed to mix with air. Accumulation of gas is an ignition hazard. Vapors are heavier than air and may travel to an ignition source."
20. Hydrocarbons are flammable substances. *See, e.g.,* <http://www.epa.gov/ozone/snap/refrigerants/hc-12a.html>
21. Enviro-Safe's website states that ES 22a is "flammable to an open flame or spark."
22. Enviro-Safe's website has described the product ES 22a as a replacement for a substance known as "R-22," to be used mainly for home air conditioning units.
23. R-22 is a non-flammable ODS approved by EPA for use as a refrigerant in residential air conditioning units.
24. R-22 is another name for HCFC-22. <http://www.epa.gov/ozone/geninfo/numbers.html>
25. Enviro-Safe did not submit a notice of intent to EPA to introduce ES-22a into interstate commerce 90 days prior to such introduction.
26. EPA has not approved ES 22a as a substitute for R-22 or HCFC-22.
27. Enviro-Safe introduced ES 22a into commerce before the expiration of 90 days after a notice of intent has been initially submitted to EPA.
28. The original Class II substance that ES 22a is intended to replace, HCFC-22, is still available for use as a refrigerant and is commonly used throughout the industry.

Conclusions of Law

29. Enviro-Safe is a "person" under the SNAP regulations.
30. ES 22a is a product substitute intended for use as a replacement for a Class I or Class II compound, and thus a "substitute," as defined by the SNAP regulations at 40 C.F.R. § 82.172.
31. Enviro-Safe is a "producer" under the SNAP regulations, in that it formulates or otherwise creates a substitute in its final form for distribution or use in interstate commerce.

32. Enviro-Safe's failure to submit a notice of intent to introduce ES 22a into interstate commerce 90 days prior to such introduction constitutes a violation of 40 C.F.R. § 82.176(a).
33. Enviro-Safe's introduction of ES 22a into interstate commerce before the expiration of 90 days after a notice of intent has initially been submitted to EPA constitutes a violation of 40 C.F.R. § 82.174(a).
34. Enviro-Safe illegally marketed the hydrocarbon product, ES 22a, for unapproved end uses by marketing ES 22a as a replacement for a substance known as "R-22," to be used mainly for home air conditioning units.

Risks to Human Health and the Environment

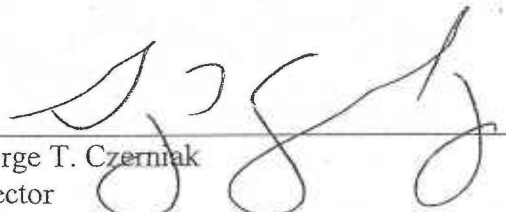
35. The use of ES 22a, a hydrocarbon refrigerant, in home air conditioning units as a substitute for R-22 creates the potential for explosion and fires. As such, it creates a serious risk to human health and the environment.

Finding of Violation

36. For the above reasons, EPA finds that Enviro-Safe has violated the SNAP regulations at 40 C.F.R. §§ 82.174(a) and 82.176(a).

Date

6/11/13


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

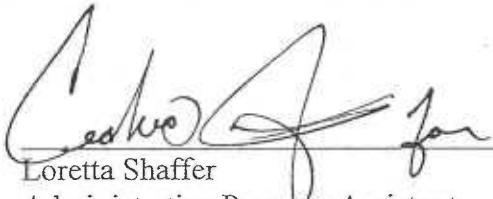
I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-13-IL-30, by Certified Mail, Return Receipt Requested, to:

Ms. Julie Price, Owner
Enviro-Safe Refrigerants, Inc.
400 Margaret Street
Pekin, Illinois 61554

I also certify that I sent copies of the Finding of Violation by first-class mail to:

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

On the 11 day of June 2013.


Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7676 0294