

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

UNITED STATES OF AMERICA,

Plaintiff,

versus

BASF CORPORATION,

Defendant.

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CIVIL ACTION NO. 1:09-CV-914

CONSENT DECREE

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Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) has filed a complaint in this action concurrently with this Consent Decree alleging that the Defendant, BASF Corporation, violated the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq., at Defendant’s facilities located in Beaumont, Texas; Washington and South Brunswick, New Jersey; Greenville, Ohio; and Livonia, Michigan (“Defendant’s Subject Facilities”).

The Complaint against Defendant alleges specific violations by Defendant of the refrigerant repair, testing, record-keeping, and reporting regulations set forth in 40 C.F.R. Section 82.156, promulgated pursuant to Subchapter VI of the CAA (“Stratospheric Ozone Protection”), 42 U.S.C. §§ 7671-7671q, at Defendant’s Subject Facilities. The Complaint alleges that Defendant: (1) failed to repair leaks in industrial process refrigeration appliances (“IPRAs”) within thirty days of the discovery of the leaks, thus allowing the release into the environment of refrigerants containing ozone-depleting substances; (2) failed to conduct initial and follow up verifications of leak repair; (3) failed to notify EPA of the failure to complete successful follow-up verifications of leak repair; (4) failed to timely prepare a plan to retrofit or retire leaking IPRAs; and (5) failed to timely retrofit or repair leaking IPRAs, as required by 40 C.F.R. § 82.156.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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 and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial 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 judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b).

II. APPLICABILITY

3. 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.

4. No transfer of ownership or operation of Defendant's Subject Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and

shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Regions 2, 5, and 6, the United States Attorney for the Eastern District of Texas, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of any of Defendant's Subject Facilities without complying with this Paragraph constitutes a violation of this Decree. This Paragraph does not apply to BASF's Subject Facility at South Brunswick, New Jersey, which BASF sold before the Effective Date of this Consent Decree

5. 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, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. 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.

III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the CAA or in the applicable regulations located at 40 U.S.C. Part 82, Subpart F (the "Subpart F Regulations") promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or in 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. "Appliance" means a device as defined at 40 C.F.R. § 82.152.

- b. "Complaint" shall mean the complaint filed by the United States in this action;
- c. "Consent Decree" or "Decree" shall mean this Decree;
- d. "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;
- e. "Defendant(s)" shall mean BASF;
- f. "Defendant's Subject Facilities" shall mean Defendant's facilities located in Beaumont, Texas, Washington and South Brunswick, New Jersey, Greenville, Ohio, and Livonia, Michigan;
- g. "Designated Appliance" means an Appliance to be retrofitted or retired as set forth in Section V of this Consent Decree;
- h. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. "Effective Date" shall have the definition provided in Section XIV;
- j. "Facility" means a discrete parcel of real property or such a parcel improved by Defendant's buildings, factory, plant, premises, or other improvements, at which Defendant operates a business, containing at least one Appliance;
- k. "Industrial Process Refrigeration Appliance" or "IPRA" means any Appliance that is directly linked to the manufacturing process and that contains more than fifty (50) pounds of an ODS Refrigerant;

l. “Non-Ozone Depleting Refrigerant” or “Non-ODS Refrigerant” means any refrigerant which is not regulated under Title VI of the CAA, 42 U.S.C. §§ 7671-7671q, or EPA’s Subpart F Regulations, as a Class I or a Class II known or suspected ozone-depleting substance, and is approved as a substitute by EPA under 40 C.F.R. Part 82, Subpart G, with such regulatory classification determined as of the date an ODS system is converted to use a “Non-Ozone Depleting Refrigerant;”

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

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

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

p. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

q. “Parties” shall mean the United States and Defendant;

r. “Retire,” “Retirement,” “Retired,” or “Retirements” means the permanent removal of an Appliance from service, together with the proper removal of all refrigerant from the appliance.

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

t. “Section” shall mean a portion of this Decree identified by a roman numeral;

u. "Subject IPRAs" shall mean those IPRAs at Defendant's Subject Facilities that serve as the basis for the violations alleged in the Complaint.

v. "United States" shall mean the United States of America, acting on behalf of EPA;

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$384,200 as a civil penalty. Interest on any balance of principal will accrue at the rate specified in 28 U.S.C. § 1961 from the due date through the date of full and complete payment.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Texas, 350 Magnolia Avenue, Suite 150, Beaumont, TX 77701, phone (409) 839-2538. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. BASF Corporation*, and shall reference the civil action number and DOJ case number 90-5-2-1-08255, to the United States in accordance with Section XIII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

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

V. COMPLIANCE REQUIREMENTS

11. Defendant shall comply with 40 C.F.R. § 82.156 with respect to the Subject IPRA's. For each Subject IPRA, Defendant agrees to maintain and to direct its contractors to maintain servicing records for each independent circuit which indicates the amount of refrigerant added or removed from each circuit, and that describes the service work performed for each independent circuit and the date of such service work.

12. Defendant shall Retrofit or Retire the Subject IPRA identified as Appliance H820, located at Defendant's Beaumont, Texas Facility, by May 31, 2010. In addition, Defendant shall Retrofit or Retire those Subject IPRA's identified as Appliances H317A and H317B, also located at Defendant's Beaumont, Texas Facility, by December 31, 2011. All refrigerant removed from the Retrofitted or Retired Subject IPRA's shall be either sent for destruction in accordance with the provisions of 40 C.F.R. § 82.104(h) or reclaimed as defined in 40 C.F.R. § 82.152, by a certified reclaimer as defined in 40 C.F.R. § 82.164. If Defendant Retires a Subject IPRA listed in this Paragraph, it shall not use any of the Retired units (unless Retrofitted for use) and shall decommission or dismantle the Retired Units in such a way that the Retired Units cannot be reused for refrigeration by Defendant or others. After Retirement of a Subject IPRA, if Defendant wishes to install an IPRA in the place of the Retired Subject IPRA, Defendant must either: (1) replace that Retired Subject IPRA with a Non-ODS System or (2) replace that Retired Subject IPRA with a unit that has been Retrofitted. Within thirty days after completing the Retrofit or Retirement of a Subject IPRA listed above, Defendant shall submit to EPA, at the

addresses specified in Section XIII, a certification stating that the Retrofit or Retirement has been completed, a description of any new equipment installed, the type of refrigerant used in the Retrofitted unit or the new unit used to replace the Retired Subject IPRA, or stating that no IPRA will be used to replace a Retired IPRA, and documentation showing that the refrigerant from all Retrofitted or Retired Subject IPRA's was properly destroyed or reclaimed in accordance with this Consent Decree.

13. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA may in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission. With respect to the non-compliance report required to be submitted as set forth in Paragraph 19.b, below, EPA shall in writing take approve or disapprove the report as set forth in this Paragraph.

14. If the submission is approved pursuant to Paragraph 13.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 13.b or .c, Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section IX of this Decree (Dispute Resolution).

15. If the submission is disapproved in whole or in part pursuant to Paragraph 13.c or .d, Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct

all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

16. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

17. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

18. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

19. Defendant shall submit the following reports:

a. Within 30 Days after the end of each calendar-year after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII, Defendant shall submit a report for the preceding year that shall include: (i) a description of the activities undertaken to comply with the requirements of Section V (“Compliance Requirements”) above during the calendar-year prior to the date of the report; (ii) a list of Appliances that Defendant has Retrofitted or Retired in accordance with Paragraph 12 above; and (iii) a list of any Subject Facility(ies) for which ownership or operation has been transferred in accordance with Paragraph 4, above.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves

Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

20. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree, or the performance of its Subject Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

21. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

22. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

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

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

23. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA or implementing regulations, or by any other

federal, state, or local law, regulation, permit, or other requirement.

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

VII. STIPULATED PENALTIES

25. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (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.

26. Late Payment of Civil Penalty

If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

27. Violations of 40 C.F.R. § 82.156

The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of the 40 C.F.R. § 82.156 for each violation of the requirements identified in Paragraph 11, above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,250	31st Day and beyond]

28. Compliance Milestones

The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraph 12, above, excluding the submission of any required reports identified in Paragraph 12:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,250	1st through 14th Day
\$ 1,500	15th through 30th Day
\$ 2,000	31st Day and beyond

29. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Paragraph 12 and Section VI of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th Day
\$ 500	15th through 30th Day
\$ 1000	31st Day and beyond

30. 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.

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

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

33. Stipulated penalties shall continue to accrue as provided in Paragraph 30 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 as provided for in Paragraph 35, 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 as provided for in Paragraph 35, 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, as provided for in Paragraph 35, within 15 Days of receiving the final appellate court decision.

34. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, 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.

35. 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.

36. Subject to the provisions of Section XI of this Consent Decree (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 the 40 C.F.R. § 82.156, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

37. "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.

38. 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 Ms. Toni Allen of EPA Region VI, by telephone (214) 665-7271, by electronic mail (Allen.Toni@epa.gov), or by facsimile transmission (214)665-7446, 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 event. 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.

39. 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.

40. 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.

41. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (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 37 and 38 above. 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.

IX. DISPUTE RESOLUTION

42. 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.

43. 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.

44. 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.

45. 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.

46. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 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.

47. 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.

48. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 44 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 44, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

49. 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 33. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

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

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in

accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by

Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data;

and

e. assess Defendant's compliance with this Consent Decree.

51. 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.

52. 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: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) 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.

53. 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.

54. 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.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

55. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

56. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55. 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 55. 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 facilities, whether related to the violations addressed in this Consent Decree or otherwise.

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's Subject Facilities 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 55 of this Section.

58. 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, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

XII. COSTS

61. 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.

XIII. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08255

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007

CFC Coordinator
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard, AE-17J
Chicago, IL 60604

Mony Chabria
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 5

77 W. Jackson Boulevard, C-14J
Chicago, IL 60604

David Garcia, Associate Director (6EN-A)
Air/Toxics and Inspection Coordination Branch
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Director
Air Enforcement Division (2242-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

To EPA:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007

CFC Coordinator
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard, AE-17J
Chicago, IL 60604

Mony Chabria
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard, C-14J
Chicago, IL 60604

David Garcia, Associate Director (6EN-A)
Air/Toxics and Inspection Coordination Branch
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Director
Air Enforcement Division (2242-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

To Defendant:

Nancy Lake Martin
Senior Environmental Counsel
BASF Corporation
100 Campus Drive
Florham Park, NJ 07932

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

64. 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.

XIV. EFFECTIVE DATE

65. 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.

XV. RETENTION OF JURISDICTION

66. 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 IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

67. 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.

68. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 48, 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).

XVII. TERMINATION

69. After Defendant has completed the requirements of Section V (Compliance Requirements) of this Decree, has retired or retrofitted the Beaumont Appliances H317A, H317B, and H820, identified in Paragraph 12 above, has thereafter maintained satisfactory compliance with this Consent Decree for a period of one year, has complied with all other requirements of this Consent Decree, 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.

70. 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.

71. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 44 of Section IX, until 90 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

72. 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.

XIX. SIGNATORIES/SERVICE

73. Each undersigned representative of Defendant and the Assistant Attorney General

for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

74. 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.

XX. INTEGRATION

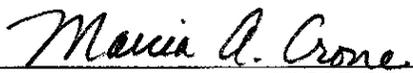
75. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other 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.

XXI. FINAL JUDGMENT

76. 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.

Dated and entered this 3 day of March, 2010



UNITED STATES DISTRICT JUDGE
Eastern District of Texas

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the *United States v. BASF Corporation*, relating to compliance with 40 C.F.R. Section 82.156:

FOR THE UNITED STATES OF AMERICA

Date: _____



JOHN C. CRUDEN
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

CONSENT DECREE RE:
U. S. v. BASF Corporation
Re: Compliance with 40 C.F.R. Section 82.156
Eastern District of Texas

Date: 9/25/09



STEVEN D. ELLIS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

JOHN MALCOLM BALES
United States Attorney
Eastern District of Texas

Date: 10/19/09



MICHAEL LOCKHART
Assistant United States Attorney
Eastern District of Texas
350 Magnolia Avenue Suite 150
Beaumont, TX 77701

CONSENT DECREE RE:
U. S. v. BASF Corporation
Re: Compliance with 40 C.F.R. Section 82.156
Eastern District of Texas

Date: _____

STEVEN D. ELLIS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

JOHN MALCOLM BALES
United States Attorney
Eastern District of Texas

Date: _____

MICHAEL LOCKHART
Assistant United States Attorney
Eastern District of Texas
350 Magnolia Avenue Suite 150
Beaumont, TX 77701

October 9, 2009

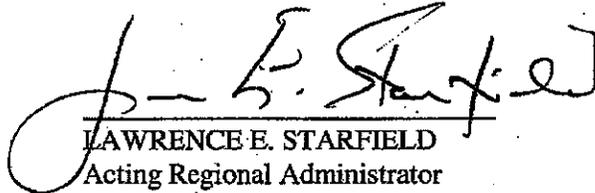
DATED:



ADAM M. KUSHNER
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

CONSENT DECREE RE:
U. S. v. BASF Corporation
Re: Compliance with 40 C.F.R. Section 82.156
Eastern District of Texas

9/15/09
DATED:



LAWRENCE E. STARFIELD
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202

CONSENT DECREE RE:
U. S. v. BASF Corporation
Re: Compliance with 40 C.F.R. Section 82.156
Eastern District of Texas

FOR THE DEFENDANT

BASF CORPORATION

By: James L. Bero

Name: JAMES L. BERO

Title: SR. Vice President.
Environment, Health & Safety