

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 4:20-cv-1495
)	
v.)	
)	Judge _____
AIR LIQUIDE LARGE INDUSTRIES)	
U.S. LP and AIRGAS USA, LLC)	
)	
Defendants.)	
)	

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Air Liquide Large Industries U.S. LP (“Air Liquide”) and Airgas USA, LLC (“Airgas”) (collectively, the “Settling Defendants”), contemporaneously with the lodging of this Consent Decree. The Complaint alleges that Settling Defendants violated Sections 112(r)(1) and 112(r)(7) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7412(r)(1) and 7412(r)(7), and the Chemical Accident Prevention Provisions promulgated at 40 C.F.R. Part 68 (the “Risk Management Program” regulations). The alleged violations relate to acts and omissions that occurred at four industrial facilities: Airgas’s specialty gas blending facility located in La Porte, Texas at 11426 W. Fairmont Pkwy (“La Porte #1), and Air Liquide’s three facilities located at 11450 W. Fairmont Pkwy (“La Porte #2), at Highway 332, 2120 Victoria St., Freeport, Texas (“Freeport”), and at 11777 Bay Area Blvd., Pasadena, Texas

(“Bayport”). The La Porte #1 facility is no longer in operation.

Pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), the United States seeks assessment of civil penalties and injunctive relief based on Settling Defendants’ alleged violations of Section 112(r)(7) of the CAA and the Risk Management Program regulations.

Settling Defendants do not admit any fact or liability to the United States arising out of the allegations 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 on the claims addressed in the Consent Decree, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking testimony and without adjudication or admission of any issue of fact or law except as provided above and in Section I, below, 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 Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. The Court has personal jurisdiction over the Parties to this Consent Decree.

2. Venue is proper 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 (c) and 28 U.S.C. § 1395(a), because three of Defendants’ facilities are located in Harris County (La Porte #1 and #2, Bayport) and the fourth is in Brazoria County (Freeport), Texas, and both counties are within this judicial district. In addition, venue is proper because the actions giving rise to the violations alleged in the

Complaint occurred in this judicial district, and because Defendants may otherwise be found in this judicial district.

3. For purposes of this Decree, or any action to enforce this Decree, Settling Defendants consent to the Court's jurisdiction over this Decree and over Settling Defendants, and consent to venue in this judicial district.

4. Notice of the commencement of this action has been given to the State of Texas as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. SETTling DEFENDANTS

5. Settling Defendants are Air Liquide Large Industries U.S. LP and Airgas USA, LLC, and each is a Delaware Corporation. Airgas USA, LLC, owns the LaPorte #1 facility. Air Liquide Large Industries U.S. LP owns and operates the Bayport, Freeport, and LaPorte #2 facilities.

III. APPLICABILITY

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

7. No transfer of ownership or operation of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Settling Defendants of their obligation to ensure that the terms of the Decree are implemented. At least thirty (30) days prior to any such transfer, Settling Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer and the transferee to the United States in accordance with Section XIV (Notices). Any transfer

or attempt to transfer of ownership or operation of a Facility without complying with this Paragraph constitutes a violation of this Decree.

8. Defendants 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. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

9. In any action to enforce this Consent Decree, Settling Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

10. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated thereunder, 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 document, including Appendix A hereto.

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, the rules set forth in Rule 6(a) of the Federal Rules of Civil Procedure shall be followed.

d. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Court for public comment.

e. “Effective Date” shall have the definition provided in Section XV.

f. “EAP” shall mean the enhanced auditing protocol setting forth additional audit requirements over and above those set at 40 C.F.R. 68.79 that Air Liquide will implement at its Facilities under this Consent Decree and as described in Appendix A. For the three Air Liquide Facilities, Air Liquide will (1) implement two additional audits in lieu of the next regularly scheduled compliance audit, (2) increase the number of auditors participating in each audit, (3) increase the number of audit staff days for each audit, (4) use an enhanced audit checklist to complete the audit, and (5) provide additional reporting to EPA. The enhanced auditing protocol ends after each facility's audit is completed in 2022. These audits will "reset" the date of the next regularly schedule compliance audit to 2025.

g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

h. “Facilities” shall mean Settling Defendant’s facilities located in La Porte, Bayport, and Freeport, Texas, and each shall be a “Facility.”

i. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

j. “Parties” shall mean the United States, on behalf of EPA, and Settling Defendants.

k. “Plaintiff” shall mean the United States, on behalf of EPA.

l. “Section” shall mean a portion of this Decree identified by a Roman

numeral.

m. “United States” shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

11. Within thirty (30) Days after the Effective Date, Settling Defendants shall pay to the United States the sum of \$257,000.00 as a civil penalty, together with interest on that amount accruing from the date on which this Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging of the Consent Decree. Settling Defendants are jointly and severally liable for this civil penalty.

12. Settling Defendants 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 Settling Defendants by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the Southern District of Texas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Kevin Collins
Bracewell LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061
(512) 494-3640
kevin.collins@bracewell.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

13. At the time of payment, Settling Defendants shall send to the United States 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 in *United States of America v. Air Liquide Large Industries U.S. LP and Airgas USA, LLC* (S.D. Tex.). The transmittal letter shall reference the civil action number assigned to this case and DOJ case number 90-5-2-1-07132/2 and shall be sent to the United States in accordance with Section XIV (Notices) of this Consent Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Settling Defendants shall not deduct the civil penalty paid under this Section in calculating their federal income taxes.

VI. COMPLIANCE REQUIREMENTS

14. Settling Defendants shall comply with the CAA, as required by the following provisions: Sections 112(r)(1) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(1) and 7412(r)(7)(E), and 40 C.F.R. Part 68 (Risk Management Program regulations).

15. Prior to the filing of the Complaint and lodging of the Consent Decree in this matter, without admission of liability or of violation of law, Settling Defendants undertook the following improvements and corrective measures at their facilities:

- Completed a process-hazard analyses for oxy-fuel blending operations;
- Inspected indoor storage practices for flammable gases;
- Minimized indoor storage of flammable gases;

- Evaluated the effectiveness of gas-detection and alarm warning systems;
- Evaluated compliance and electrical hazard classification;
- Reviewed ventilation systems; and
- Inventoried gas detectors and their suitability for current operations.

16. Defendant Airgas, based on the alleged acts and omissions at La Porte #1, also implemented the above-listed relief at its only other gas blending facility, located in Pasadena, Texas.

17. Within thirty (30) days of the Effective Date, Defendant Air Liquide shall implement the EAP at its three facilities as set forth in Appendix A. Defendant Airgas will also implement the EAP at its La Porte #1 facility, if Airgas reopens that facility before this Consent Decree is terminated. The EAP will remain in place until at least the two EAP audits have been conducted at each of the subject facilities.

18. Pursuant to this Consent Decree, Defendant Air Liquide will complete the required EAP audits, submit the required reports to EPA, and complete all response and corrective action items for its facilities, all in accordance with Appendix A and 40 C.F.R. § 68.79.

VII. REPORTING REQUIREMENTS

19. Settling Defendants shall submit all required reports as set forth in Appendix A.

20. All reports required under this Section must be submitted to the persons and in the manner designated in Section XIV (Notices).

21. Each report submitted by Settling Defendants under this Section must be signed by a responsible official, as defined in 40 C.F.R. § 70.2, of the Facility 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

22. The reporting requirements of this Consent Decree do not relieve Settling Defendants 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.

23. 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.

VIII. STIPULATED PENALTIES

24. Settling Defendants shall be liable, jointly and severally, 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 within the specified time schedules established by or approved under this Decree.

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

26. Failure to Meet Compliance Requirements. The following stipulated penalties

shall accrue per violation per Day for each violation of the requirements identified in Sections VI and Appendix A, including the implementation of the EAP, performance of audits, and the completion of all response and corrective action requirements as set forth in Section VI and Appendix A:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

27. Failure to Meet Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for Settling Defendants failure to meet the reporting requirements of Section VII and Appendix A:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

28. Payment of any stipulated penalties shall be made in accordance with payment instructions in Section V above, except that all transmittal correspondence shall state that any such payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

29. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

30. Settling Defendants shall pay any stipulated penalty within thirty (30) Days of receiving a written demand.

31. Stipulated penalties shall continue to accrue as provided in Paragraphs 25, 26 and 27 during any Dispute Resolution, but stipulated penalties need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Settling Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (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, Settling Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (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, Settling Defendants shall pay all accrued penalties determined to be owing together with interest, within thirty (30) Days of receiving the final appellate court decision.

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

33. Settling Defendants shall not deduct stipulated penalties paid under this Section in calculating their federal income taxes.

34. If Settling Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Settling Defendants 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 Defendants failure to pay any stipulated penalties.

35. The payment of penalties and interest, if any, shall not alter in any way Settling Defendants' obligation to complete the performance of the requirements of this Consent Decree.

36. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendant' for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

37. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure events and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Settling Defendants' 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, Settling

Defendants shall provide notice orally or by electronic or facsimile transmission to EPA no more than 72 hours of when Settling Defendants first knew that the event might cause a delay. Within seven days thereafter, Settling Defendants 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; Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants 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 Settling Defendants 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. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' 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 Settling Defendants 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 Settling Defendants in writing of its decision.

41. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants 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 Settling Defendants complied with the requirements of Paragraphs 37-43. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

X. 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. Settling Defendants' failure to seek resolution of a dispute under this Section shall preclude Settling Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendants 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 Settling Defendants send 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 thirty (30) days following receipt of the Notice of Dispute, 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 thirty (30) days after the conclusion of the informal negotiation period, Settling Defendants invoke formal dispute resolution procedures set forth in Paragraphs 44-49 below.

44. Formal Dispute Resolution. Settling Defendants 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 Defendants' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Settling Defendants' position and any supporting documentation relied upon by Settling Defendants.

45. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Settling Defendants' 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 Settling Defendants, unless Settling Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

46. Settling Defendants 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 thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Settling Defendants' 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 Settling Defendants' motion within the time period allowed by the Local Rules of this Court. Settling Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

48. Standard of Review. In any dispute brought under Paragraphs 43 and 44, Settling Defendants 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 Defendants 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 31. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and shall be paid as provided in Section VIII (Stipulated Penalties) unless waived or reduced by the United States pursuant to Paragraph 32.

XI. INFORMATION COLLECTION/ CONFIDENTIAL BUSINESS INFORMATION

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 documentary evidence, including photographs and similar data;
- and
- d. Assess Settling Defendants' compliance with this Consent Decree.

51. Until five years after the termination of this Consent Decree, Settling Defendants 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 Settling Defendants' performance of their 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, Settling Defendants 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, Settling Defendants shall notify the United States at least ninety (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, Settling Defendants shall deliver any such documents, records, or other information to EPA in electronic form. Settling Defendants 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 Settling Defendant(s) assert such a privilege, they 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(s). 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. Settling Defendants may also assert that information required to be provided under this Consent Decree is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Settling Defendants seek to protect as CBI, Settling Defendants shall follow the procedures set forth in 40 C.F.R. Part 2. Unless Settling Defendants make a claim at the time that they submit the information, the information may be made available to the public by EPA without further notice to the Settling Defendants.

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 or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Settling Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. 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 at otherwise provided therein, this Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, regulations, or permit conditions. 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, Settling Defendants' 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, Settling Defendants 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 the claims that have been specifically resolved pursuant to Paragraph 55 of this Section. Settling Defendants reserve any and all defenses not specifically addressed in 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. Settling Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations,

orders, and permits. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Settling Defendants' 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, orders, or permits.

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

60. The Parties shall bear their own costs related to this Consent Decree for civil penalties, including attorneys' fees, except the United States shall be entitled to collect costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree.

XIV. NOTICES

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

As to the United States:

The U.S. Department of Justice:

By email:

EES Case Management Unit at eescdcopy.enrd@usdoj.gov

Re: DJ # 90-5-2-1-07132/2

By mail:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(re: DJ # 90-5-2-1-07132/2)

EPA Region 6:

By email: through the Consent Decree Reporting System: Register and upload
Consent Decree submittals at <https://cdx.epa.gov>.

By mail:
Chief
RCRA Enforcement Branch (ECDS)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Jacob Gallegos
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
gallegos.jacob@epa.gov

As to Settling Defendants:

Tim Wilkins, Kevin Collins
Bracewell LLP
111 Congress Ave., Ste. 2300
Austin, TX 78701-4061
Timothy.wilkins@bracewell.com
Kevin.collins@bracewell.com

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

recipient or notice address provided above.

63. 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

64. 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.

XVI. RETENTION OF JURISDICTION

65. The Court shall retain jurisdiction of 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 (Force Majeure) and XVI (Retention of Jurisdiction) or effectuating or enforcing compliance with the terms of this Decree.

XVII. TERMINATION

66. After Settling Defendants have completed the requirements of Sections VI and VII (Compliance and Reporting Requirements), have completed all other requirements of this Consent Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Settling Defendants may serve upon the United States a Request for Termination stating that Settling Defendants have satisfied those requirements, together with all necessary supporting documentation.

67. Following receipt by the United States of Settling Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement

that the Parties may have as to whether Settling Defendants have 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.

68. If the United States does not agree that the Decree may be terminated, Settling Defendants may invoke Dispute Resolution under Section X. However, Settling Defendants shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) days after service of its Request for Termination.

XVIII. MODIFICATION

69. 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. Extensions of any deadlines set forth herein that are less than one hundred and twenty (120) Days shall not be considered a material modification under this Paragraph.

70. 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 49, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with the Federal Rule of Civil Procedure 60(b).

XIX. PUBLIC PARTICIPATION

71. This Consent Decree shall be lodged with the Court for a period of no less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Parties

agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to notice of lodging of the Consent Decree and a public comment period. The United States reserves the right to withdraw or withhold consent to entry of the Consent Decree if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

72. Settling Defendants consent to entry of this Consent Decree without further notice and agree 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 Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

73. The Deputy Chief for the Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, and the undersigned representative of Defendants certify 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 the terms of this Decree.

74. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

75. Settling Defendants agree to accept service of process of the Complaint by mail 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. All other Court filings will be served through the Court's electronic case filing system. Settling Defendants need not file an answer to the Complaint in this action unless

or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

76. 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. APPENDICES

77. The following Appendix is attached to and part of this Consent Decree:

“Appendix A” is the Enhanced Auditing Protocol”.

XXIII. FINAL JUDGMENT

78. 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.

This Consent Decree is dated and entered this ____ day of _____, 2020.

UNITED STATES DISTRICT JUDGE
Southern District of Texas

Signature Page to Consent Decree in *U.S. v. Air Liquide Large Industries U.S. LP and Airgas USA, LLC*

FOR PLAINTIFF UNITED STATES OF AMERICA:

KAREN DWORKIN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice



SAMUEL D. BLESI DC Bar No. 417818
Trial Attorney
Environment and Natural Resources Division
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
202-514-1466
Sam.Blesi@usdoj.gov

RYAN PATRICK
United States Attorney
Southern District of Texas

DANIEL D. HU
Assistant United States Attorney
Chief, Civil Division
SD Texas ID 7959
Texas bar number 10131415
1000 Louisiana, Suite 2300
Houston, TX 77002
Ph: (713) 567-9518
Daniel.Hu@usdoj.gov

Signature Page to Consent Decree in *U.S. v. Air Liquide Large Industries U.S. LP and Airgas USA, LLC*

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=CHERYL SEAGER,
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Date: 2020.04.27 15:37:14 -05'00'

CHERYL T. SEAGER

Director

Compliance Assurance and Enforcement Division

U.S. Environmental Protection Agency, Region 6

1201 Elm Street, Suite 500

Dallas, TX 75270-2102



JACOB A. GALLEGOS

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 6

1201 Elm Street, Suite 500 (ORCER)


Dallas, TX 75270 2102

Signature Page to Consent Decree in *U.S. v. Air Liquide Large Industries U.S. LP and Airgas USA, LLC*
FOR DEFENDANT:



RUI COELHO, PRESIDENT
Air Liquide Large Industries North America

ANDREW R. CICHOCKI, PRESIDENT
Airgas USA, LLC



TIMOTHY A. WILKINS
Texas Bar No. 00788668
KEVIN D. COLLINS
Texas Bar No. 240504438
SDTX No. 826855
111 Congress Ave.
Suite 2300
Austin, Texas 78701-4061
(512) 494-3640
(800) 404-3970 fax
timothy.wilkins@bracewell.com
kevin.collins@bracewell.com

**Signature Page to Consent Decree in *U.S. v. Air Liquide Large Industries U.S. LP and Airgas USA, LLC*
FOR DEFENDANT:**

RUI COELHO, PRESIDENT
Air Liquide Large Industries North America



ANDREW R. CICHOCKI, PRESIDENT
Airgas USA, LLC

TIMOTHY A. WILKINS
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KEVIN D. COLLINS
Texas Bar No. 240504438
SDTX No. 826855
111 Congress Ave.
Suite 2300
Austin, Texas 78701-4061
(512) 494-3640
(800) 404-3970 fax
timothy.wilkins@bracewell.com
kevin.collins@bracewell.com

Appendix A
(Enhanced Audit Protocol (“EAP”))

Upon the Effective Date, Settling Defendants shall implement the following auditing protocol for the “Air Liquide” Facilities (La Porte #2, Bayport, and Freeport), and for La Porte #1 if Airgas resumes operations before this Consent Decree is terminated. These requirements are in addition to the RMP compliance audit requirements set forth in 40 C.F.R. § 68.79:

a. Settling Defendants will implement two audits in addition to the next regularly scheduled compliance audit at facilities subject to this consent decree, the first audit to be scheduled in 2020 and the second audit to be scheduled in 2022. The last audit performed in 2022 will reset the date of the next compliance audit for each facility to 2025, and each facility will conduct its compliance audit at that time in accordance with 40 C.F.R. § 68.79(b).

Beginning 60 days after the Effective Date, Settling Defendants shall notify EPA of the Settling Defendants' schedule for conducting the two additional compliance audits at each of the above facilities.

b. For each additional audit pursuant to subparagraph (a), Settling Defendants shall:

(1) For each covered process, increase the number of field auditors knowledgeable in the process (as required in 40 C.F.R. § 68.79(b)) from one to two such persons;

(2) Increase the field auditors' audit-work-day timeline from five to ten days for the minimum time to conduct an audit, with all audits to be completed within 14 days of the start of the audit;

(3) Provide audit reports to U.S. EPA Region 6 on the audit findings under the Enhanced Audit Protocol within 30 days of completion of each audit; and shall include in each such report their proposed response to each of the audit findings requiring a response (i.e. corrective action).

(4) Provide interim reports at least once every 6 months from the date of the audit report to EPA on Settling Defendants' progress in implementing corrective action to address audit findings until all corrective action has been completed. Interim reporting is required until the last corrective-action item identified in any of the enhanced audits at the Facilities is completed; and

c. Settling Defendants shall complete "noncapital-expenditure-corrective-action items" within 18 months of the date of the relevant audit findings. The term "non-capital-expenditure-corrective-action items" is defined as any repair that does not require a shutdown or is projected to cost \$50,000.00 or less. Any corrective action projected to cost more than \$50,000 shall be completed within 36 months of discovery.

d. The Enhanced Auditing Protocol requirement ends after each facility's audit is satisfactorily completed in 2022.