IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION No.
	)	
BRISTOL-MYERS SQUIBB COMPANY,	)	
	)	
Defendant.	)	
	)	

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint concurrently with this Consent Decree, alleging that the Defendant, Bristol-Myers Squibb Company ("Defendant"), violated the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., at Defendant's facilities located in Wallingford, Connecticut; Mount Vernon, Indiana (the "Manufacturing Facility" and the "Logistics Facility"); Evansville, Indiana; Billerica, Massachusetts; Zeeland, Michigan; New Brunswick, New Jersey; Pennington, New Jersey (the "Hopewell, N.J. Facility"); Princeton, New Jersey (the "Lawrenceville Facility"); Buffalo, New York; East Syracuse, New York; Barceloneta, Puerto Rico; Humacao, Puerto Rico; and Mayaguez, Puerto Rico; (the "Defendant's Facilities").

The Complaint, pursuant to CAA, 42 U.S.C. § 7413(b), seeks injunctive relief and civil penalties for alleged violations of the refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, Sections 82.152 - 82.166, ("Recycling and Emission

Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, at Defendant's Facilities.

Beginning July 9, 2004, Defendant voluntarily disclosed potential violations of 40 C.F.R. Part 82 at Defendant's Facilities. Defendant contends that its disclosures met the requirements of EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations, 65 Fed. Reg. 19,618 (Apr. 11, 2000) ("EPA's Audit Policy").

Based on Defendant's representations contained in correspondence to EPA dated July 9, August 12, November 10, and December 17, 2004, EPA has determined that certain violations identified by Defendant have met the conditions of EPA's Audit Policy and are appropriate for resolution in accordance with the Policy.

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

NOW THEREFORE, with the consent of the Parties, and without the admission of any fact or law, except as provided in Section I below, it is 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).

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

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

II. APPLICABILITY

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

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

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

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

III. DEFINITIONS

8. Unless otherwise expressly provided herein, this Consent Decree incorporates the definitions in the CAA and in the regulations promulgated pursuant to the CAA. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

a. "Appliance" means a device as defined at 40 C.F.R. § 82.152.

b. "Complaint" means the Complaint filed by the United States in this action.

c. "Consent Decree" or "Decree" means this document and Appendices A and B.

d. "Day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business the next business day.

e. "Defendant" means Bristol-Myers Squibb Company, its successors and assigns.

f. "Designated Appliance" means an Appliance listed in Appendix A to this Consent Decree.

g. "Effective Date" means the date of entry of this Consent Decree by the Court.

h. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

i. "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.

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

k. "Non-Ozone Depleting Refrigerant" or "Non-ODS Refrigerant" means any refrigerant which is not regulated under Subchapter 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."

l. "Non-ODS System" means any cooling system that contains only a Non-ODS refrigerant or contains no ODS Refrigerant.

m. "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.

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

o. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral;

p. "Parties" mean the United States and Defendant.

q. "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.

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

s. "Section" means a portion of this Consent Decree identified by a roman numeral;

t. "United States" means the United States of America, acting on behalf of EPA.

IV. DEFENDANT

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

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

V. CIVIL PENALTY

11. Defendant shall pay to the United States a civil penalty in the amount of $127,000 in settlement of the claims for civil penalties alleged in the United States' Complaint. Payment will be made pursuant to the provisions of Paragraph 13 within thirty days (the "due date") after the Effective Date. The Civil Penalty reflects adjustments based on EPA's Audit Policy.

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

13. The payment to the United States must be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing DOJ case number 90-5-2-1-08547. Payment shall be made in accordance with instructions provided by the Financial Litigation Unit ("FLU"), U.S. Attorney's Office in the Southern District of Indiana, 10 W. Market Street, Indianapolis, Indiana 46204. The costs of such EFT shall be paid by Defendant. Any funds received after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Defendant shall provide notice of payment, referencing the U.S.A.O. File Number (which number will be supplied as part of the EFT instructions given by the FLU contact), the DOJ Case Number 90-5-2-1-08547, and the civil action case name and number, to the United States and EPA in accordance with Section XVIII. Defendant shall also provide said notice to the following person:

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

VI. INTEREST

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

VII. DEFAULT

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

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

VIII. COMPLIANCE REQUIREMENTS

17. Consistent with the terms of this Consent Decree, Defendant must Retrofit or Retire all of the Appliances listed on Appendix A of this Consent Decree by July 1, 2009, in accordance with the following schedule: Defendant must Retrofit or Retire four of the Appliances listed on Appendix A by July 1, 2007 (one Appliance already has been Retired); Defendant must Retrofit or Retire seven additional Appliances listed on Appendix A by July 1, 2008; and Defendant must Retrofit or Retire the six remaining Appliances listed on Appendix A by July 1, 2009. All refrigerant removed from the Retrofitted or Retired Appliances 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 Designated Appliance, it shall not use that Retired Appliance (unless Retrofitted for re-use) and shall decommission or dismantle the Retired Appliance in such a way that the Retired Appliance cannot be reused for refrigeration by Defendant or others. After Retirement of a Designated Appliance, if Defendant wishes to install a refrigeration unit to replace the Retired Appliance, Defendant must either: (1) replace that Retired Appliance with a Non-ODS System; or (2) replace that Retired Appliance with a unit that has been Retrofitted.

18. Defendant may not convert any Retrofitted Designated Appliance to an ODS System, or acquire and use an ODS System in place of such a Designated Appliance, or begin

using a mothballed ODS System to replace the functions of a Designated Appliance Retired pursuant to this Consent Decree.

19. No Designated Appliance may be removed from one Facility and reinstalled at another Facility without first being retrofitted prior to its reinstallation.

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

21. Where any compliance obligation required to be met under this Section requires a federal, state, or local permit or approval, Defendant must submit timely and complete applications and take all other actions necessary to obtain all permits or approvals. Defendant may seek relief under the provisions of Section "XII" ("Force Majeure") of this Consent Decree for any delay in the performance of any obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill any obligation.

IX. REPORTING

22. Defendant must submit three annual reports ("Report" or "Reports") to each EPA Region identified in Paragraph 75 as set forth below. The Reports must be submitted on or before July 31 of the years 2007, 2008, and 2009. Each Report must contain the following:

a. A description of the activities undertaken to comply with the requirements of Section VIII ("Compliance Requirements") above during the year prior to the date of the report;

b. A list of Appliances that Defendant has Retrofitted or Retired in accordance with Paragraph 17 above, including a certification stating that the Retrofit or Retirement of each identified Appliance has been completed; a description of any new equipment installed and the type of refrigerant used in the Retrofitted unit or the new unit used to replace the Retired Appliance, or a statement that no refrigeration unit will be used to replace the Retired Appliance; and documentation showing that the refrigerant from all Retrofitted or Retired Appliances was properly destroyed or reclaimed in accordance with this Consent Decree; and

c. A list of any Facility(ies) for which ownership or operation has been transferred in accordance with Paragraph 5, above.

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

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

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

24. Defendant shall perform a Supplemental Environmental Project ("SEP") under this Consent Decree in accordance with all of the provisions of Appendix "B" to this Consent Decree. As more fully set forth in Appendix B, Defendant shall retire the two New Brunswick comfort cooling units (described in the next Paragraph below) and tie in the functions of the two comfort cooling units into a centralized system (the "Centralized Chiller System") that will use water-cooled chillers that use lithium bromide absorbers with water as the refrigerant and electrical centrifugal units to handle peak loads that use R-134a as the refrigerant.

25. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Decree. "Satisfactory completion" means that Defendant shall replace two of its comfort cooling units, known as: (1) Unit 872639739 at Defendant's New Brunswick, New Jersey plant; and (2) Unit MM014107 at Defendant's New Brunswick, New Jersey plant, and tie in the functions of the two comfort cooling units into the Centralized Chiller System in accordance with the requirements set forth in Appendix B. Defendant may use contractors or consultants in planning and implementing the SEP. In implementing the SEP, Defendant shall spend not less than $2,250,000 in eligible SEP costs. Eligible SEP costs include the costs of planning and implementing the SEP. Eligible SEP costs include only those costs attributed to tying in the functions of the two New Brunswick comfort cooling units into the centralized chiller system.

26. No later than thirty-six months from the Effective Date of this Consent Decree, Defendant shall perform fully the cooling unit replacements for the two New Brunswick plant units, in accordance with Appendix B.

27. With regard to the SEP, Defendant certifies the truth and accuracy of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

b. that, as of the date of executing this Consent Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action;

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person.

28. Defendant shall submit to the United States annual SEP progress reports no later than July 31, 2007, July 31, 2008, and July 31, 2009, which shall meet the requirements set forth in Appendix B.

29. Defendant shall submit to the United States a final SEP completion report no later than sixty days from the date of final SEP completion, meeting the requirements set forth in Appendix B.

30. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendant shall provide such information.

31. After reviewing the final SEP completion report, EPA shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all applicable work plans and schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 25, above, Stipulated Penalties may be assessed under Section XI of this Consent Decree.

32. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XIII of this Decree ("Dispute Resolution"). No other disputes arising under this Section shall be subject to Dispute Resolution.

33. Each submission required under this Section shall be signed by an official of Defendant with knowledge of the SEP and shall bear the certification language set forth in Paragraph 23, above.

34. Any public statement, oral or written, in print, film, or media, made by Defendant making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Bristol-Myers Squibb Company, taken on behalf of the United States Environmental Protection Agency under the Clean Air Act."

XI. STIPULATED PENALTIES

35. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, Defendant must pay Stipulated Penalties in the amounts set forth below for each failure

to comply with the requirements of this Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, and completion of the requirements under this Consent Decree within the specified time schedules established by and approved under this Consent Decree, as set forth in Section VIII ("Compliance Requirements") and Section X ("Supplemental Environmental Project"). "Compliance" also includes the timely reporting under Section "IX" of this Consent Decree.

36. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Sections "V," "VI," "VII," "VIII," and Paragraph 29 of Section X of this Consent Decree.

Period of Failure to Comply	Penalty Per Appliance or Violation Per Day
1st through 30th day	$250.00
31st through 60th day	$500.00
61st day and beyond	$1000.00

37. For violations of Section IX of this Consent Decree, Stipulated Penalties will accrue at a rate of $100 per day for the first thirty days, and $250 per day thereafter.

38. SEP Compliance

a. If the Defendant completes the SEP, but the SEP is not satisfactory with respect to one or more of the units to be replaced, Defendant shall pay the following:

With respect to New Brunswick Unit No. 872639739	$50,000
With respect to New Brunswick Unit No. MM014107	$50,000

b. If Defendant halts or abandons work on one or more of the units to be replaced, retrofitted or retired pursuant to Section X of this Consent Decree, Defendant shall pay a stipulated penalty as follows:

With respect to New Brunswick Unit No. 872639739	$75,000
With respect to New Brunswick Unit No. MM014107	$75,000

The penalty under this Subparagraph shall accrue as of the date specified for completing the pertinent portion of the SEP, or as of the date performance ceases, whichever is earlier.

c. If Defendant fails to comply with the schedule in Section X of this Consent Decree for implementing the SEP, Defendant shall pay stipulated penalties for each failure to meet an applicable milestone, as follows:

Period of Failure to Comply	Penalty Per Appliance or Violation Per Day
1st through 30th day	$250.00
31st through 60th day	$500.00
61st day and beyond	$1000.00

d. If Defendant spends less than the amount set forth in Paragraph 25, above, Defendant shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by Defendant and the amount set forth in Paragraph 25.

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

40. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

41. Notwithstanding the date of any demand for Stipulated Penalties pursuant to Paragraph 39, all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated Penalties will

continue to accrue until performance is completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

42. Notwithstanding Paragraph 39 of this Consent Decree, Stipulated Penalties will continue to accrue as provided in accordance with Paragraphs 36-38 during any Dispute Resolution, with interest in accordance with Paragraph 14, but need not be paid until the following:

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

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

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

43. Stipulated penalties shall be paid to the Plaintiff in the same manner set forth in Section V (Civil Penalty) of this Consent Decree.

44. Defendant must pay interest on any balance of Stipulated Penalties not paid as of the time payment is due under the terms of this Consent Decree. Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. If any Stipulated Penalty is not paid in

full when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

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

XII. FORCE MAJEURE

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

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

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

49. EPA will notify Defendant in writing of its agreement or disagreement with Defendant's claim of Force Majeure within thirty days of receipt of the notice provided by Defendant under Paragraph 48. If EPA agrees that a Force Majeure event has occurred, EPA will notify Defendant in writing of its agreement to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation.

50. If EPA does not agree that a Force Majeure event has occurred, or does not agree to the extension of time sought by Defendant, EPA's position shall be binding, unless Defendant invokes Dispute Resolution under Section XIII of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed Force Majeure event is a Force Majeure event, that Defendant gave the notice required by

Paragraph 48, that the Force Majeure event caused any delay Defendant claims was attributable to that event, and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

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

XIII. DISPUTE RESOLUTION

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

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

54. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fourteen days after the conclusion of the informal negotiations period, Defendant invokes the formal Dispute Resolution procedures by serving on the United States, in accordance with Section XVIII ("Notices") of this Consent Decree a written Statement of Position on the matter

in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

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

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

57. The Director of the Air Enforcement Division, ("AED Director"), or a properly designated representative, will issue a final decision resolving the dispute. The decision of the Director will be binding on Defendant, subject only to the right to seek judicial review, in accordance with Paragraph 58, below.

58. The decision issued by EPA under Paragraph 57 may be reviewed by this Court upon a motion filed by Defendant and served upon the United States within fourteen days of receipt of EPA's decision.

59. 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.

60. In any dispute brought under Paragraph 58, Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree. The United States

reserves the right to argue that its position is only reviewable on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

61. The invocation of formal Dispute Resolution procedures under this Section will not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Paragraph 42. In the event that Defendant does not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section XI ("Stipulated Penalties").

XIV. INFORMATION COLLECTION AND RETENTION

62. The United States and the State where a Facility is located and their representatives, including attorneys, contractors, and consultants, will have the right of entry to any Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

a. Monitor the progress of all requirements under this Consent Decree;

b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. Assess Defendant's compliance with this Consent Decree.

63. Until the termination of this Consent Decree, Defendant must preserve, and must instruct its contractors and agents to preserve, all nonidentical copies of all records and documents (including documents in electronic form) now in its or its contractors' or agents' possession or control that relate in any manner to Defendant's performance of its obligations

under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

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

65. 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.

XV. FAILURE OF COMPLIANCE

66. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. § 7401, et seq., namely,

Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q. Notwithstanding the United States' review and approval of any document(s) submitted to it by Defendant pursuant to this Consent Decree, Defendant will remain solely responsible for compliance with the terms of the CAA and this Consent Decree.

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint through the date of lodging of this Consent Decree. The terms of the previous sentence with regard to certain violations determined to have met EPA's Audit Policy are expressly conditioned on the completeness and accuracy of Defendant's representations. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of Defendant.

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

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

70. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. Defendant's compliance

with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

71. 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.

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

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

XVII. COSTS

74. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Paragraphs 15 and 44.

XVIII. NOTICES

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

As to the United States:

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

Re: DOJ No. 90-5-2-1-08547

Or by Overnight Courier Service to

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

Re: DOJ No. 90-5-2-1-08547

And to EPA, at the addresses set forth below:

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

Region 2:
CFC Coordinator
Air Enforcement
U.S. EPA Region 2
290 Broadway
New York, NY 10007-1866

Region 5:
CFC Coordinator
Air Enforcement Branch
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, Il 60604-3507

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

As to the Defendant:

Debra J. Jezouit
Baker Botts LLP
The Warner
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2400

J. Richard Pooler
Senior Environmental Counsel
Bristol-Myers Squibb Company
6000 Thompson Road
Building 22
East Syracuse, NY 13507-5051

76. Notifications to or communications shall be deemed submitted on the date they are: hand-delivered; postmarked and sent by certified mail, return receipt requested; or sent by overnight courier service, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. Any such materials shall include a reference to the name, caption and number of this action.

XIX. RETENTION OF JURISDICTION

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

XX. MODIFICATION

78. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VIII ("Compliance Requirements") of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects Defendant's ability to meet the objectives of this Consent Decree.

XXI. TERMINATION

79. This Consent Decree shall terminate after Defendant has fulfilled all of its obligations under this Consent Decree and has maintained continuous satisfactory performance with this Consent Decree for a twelve-month period following entry of the Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all supporting documentation.

80. 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.

81. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XIII of this Decree. However, Defendant shall not

seek Dispute Resolution of any dispute regarding termination until forty-five days after service of its Request for Termination.

XXII. PUBLIC PARTICIPATION

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

XXIII. SIGNATORIES/SERVICE

83. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice (or his or her delegatee) 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.

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

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

86. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

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

XXV. FINAL JUDGMENT

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

So Ordered and Approved in accordance with the foregoing this _____ day of _____, 2007.

_____

United States District Judge

FOR THE UNITED STATES OF AMERICA

[redacted]

DATED:

[redacted]

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources
Division

[redacted]

DATED:

[redacted]

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

FOR THE UNITED STATES OF AMERICA (Continued)

TIMOTHY M. MORRISON
United States Attorney
Southern District of Indiana

_____ By: _____
DATED:

Assistant United States Attorney
United States Attorney's Office

[redacted] [redacted]
DATED:

[redacted]ANTA Y. NAKAYA[redacted]MA
[redacted]ssistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

FOR THE DEFENDANT

BRISTOL-MYERS SQUIBB

[redacted]

By: [redacted]

Name: Susan G. Voigt

Title: Vice President, Environment, Health and Safety

DATED: [redacted]

U.S. v. Bristol Myers Squibb
Appendix A

Refrigeration Units (CC – Comfort Cooling, CR – Commercial Refrigeration, IPR – Industrial Process Refrigeration)

Bristol-Myers Squibb Units to be retired or retrofitted:

1. Hopewell, Building 19 Glycol Chiller – CC (1,088 lbs.) (Retirement already completed)
2. Humacao, R-1201 – IPR (1,250 lbs.)
3. Humacao, K-2501 A – IPR (125 lbs)
4. Humacao, K-2501 B – IPR (125 lbs)
5. Humacao, CU-3801 – IPR (100 lbs.)
6. Humacao, CU-3803 – IPR (75 lbs.)
7. Mayaguez, 5QC136 – IPR (250 lbs.)
8. Mayaguez, 5QC135A – IPR (150 lbs.)
9. Mt. Vernon, 56H8137501 #1 – CR (80 lbs.)
10. Humacao, CH-1600 – IPR (375 lbs.)
11. Humacao, CH-8200 – IPR (60 lbs.)
12. Humacao, CH-8500 – IPR (725 lbs.)
13. Humacao, CU 821 – IPR (60 lbs.)
14. Mayaguez, 1QC083A – IPR (69 lbs.)
15. Mayaguez, 5QC134A – IPR (60 lbs.)
16. Humacao, (CU-3-7-1) – CC (70 lbs.)
17. Evansville, (AHU0034) – CC (60 lbs.)

APPENDIX B
To Consent Decree in the case of
United States v. Bristol-Myers Squibb Company

SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. Introduction

Pursuant to Section X of the Consent Decree, Bristol-Myers Squibb Company ("BMS") is required to replace two (2) of its Comfort Cooler Refrigeration Devices ("CCs") with CCs containing non-ozone depleting substance (Non-ODS) refrigerant, no later than thirty-six months from the Date of Entry of this Consent Decree, as more specifically set forth in Paragraph 3, below. BMS certifies that the CCs, identified below have never been in violation of any environmental statute or regulation; therefore, it is appropriate that the replacement of these units be considered a Supplemental Environmental Project ("SEP"). The SEP CCs utilize ODS refrigerant and the purpose for the replacement of these units is to replace ODS-containing devices with non-ODS systems, so that they no longer have the potential to release ODS refrigerant into the atmosphere. BMS shall comply with the requirements of 40 CFR Part 82 at all times.

2. Specifications at Time of Self-Disclosure (*)

Appliance	Classification	Refrigerant	Charge (lbs)	Location
MM014107	Comfort Cooler	R-11	1050	New Brunswick, NJ (Bldg. 92)
872639739	Comfort Cooler	R-11	600	New Brunswick, NJ (Bldg. 111)

(*) - The New Brunswick SEP units will be retired and their functions will be tied into two Centralized Chiller Plants (the "Centralized Chiller System"). The Centralized Chiller System will use water-cooled chillers that use lithium bromide absorbers with water as the refrigerant and electrical centrifugal units for peak capacity that use R-134a as the refrigerant.

3. Timeline for Completion

The time line for the replacement, of the two (2) SEP devices will be no later than thirty-six (36) months from the Date of Entry of this Consent Decree. The current projected timeline for the replacement of each unit is identified below:

- In anticipation of this Consent Order, the MM014107 unit at New Brunswick has already been brought off-line. The heating, ventilating, and air conditioning ("HVAC") load that this unit previously provided will be serviced by the new centralized chiller plants at the facility.

- Currently, BMS is scheduled to bring the 872639739 unit at New Brunswick offline by the end of calendar year 2008 (the HVAC load that this unit provides will be serviced by the South Chiller Plant). Unit 872639739 will be removed from the facility by June 1, 2009.

4. Specification and Cost

BMS' Global Engineering Department has developed a cost estimate for the replacement/installation of non-ODS systems for the SEP CCs. In this estimate, the costs reflect the following:

- The SEP costs for the project are limited to the costs to plan and implement the tying in of the functions of the two SEP units to the non-ODS Centralized Chiller System. BMS' Global Engineering Department estimates that the costs for the tie in of the two SEP units to the Centralized Chiller System will be at least $2,250,000.

5. SEP Progress Report

Pursuant to Paragraph 29 of Section X of the Consent Decree, BMS shall submit an annual SEP progress report to EPA (submitted on or before July 31, 2007; July 31, 2008; and, July 31, 2009). Each report must contain the following information for the most recent reporting period:

a. An itemized description of the activities that have been completed and the date the activity was completed to comply with the requirements of this Appendix;

b. An itemized description of the activities that are ongoing to comply with the requirements of this Appendix;

c. An estimate of the time period needed by BMS to complete the remaining activities identified in the timeline to complete the requirement of this Appendix; and

d. A description of any significant problems encountered in completing the SEP and the solutions thereto.

6. SEP Completion Report

Pursuant to Paragraph 29 of the Consent Decree, BMS is required to submit a SEP Completion Report containing the following information within sixty (60) days of final completion of the SEP:

a. A description of the SEP as implemented;

b. A description of any significant problems encountered in completing the SEP and the solutions thereto; and

c. Certification, in accordance with Paragraph 23 of the Consent Decree, by a responsible corporate official of BMS, that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.

The report must be sent to the following addresses:

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

And to EPA Headquarters and Regions 2 and 5:

Region 2:

CFC Coordinator
Air Enforcement
U.S. EPA Region 2
290 Broadway
New York, NY 10007

Region 5:

CFC Coordinator
Air Enforcement Branch
U.S. EPA Region 5
77 W. Jackson Blvd
Chicago, IL 60604

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