IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
WICHITA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. NORTHCUTT, INC., Defendant.	)	Civil Action No. 6:15-cv-1396

CONSENT DECREE

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I. INTRODUCTION

A. Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant, Northcutt, Inc. ("Northcutt"), violated Section 612 of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7671k, and the implementing regulations at 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184 (Significant New Alternatives Policy ("SNAP") Program).

B. The Complaint against Defendant alleges that Defendant introduced substitutes for ozone-depleting substances into interstate commerce, while failing to comply with the SNAP requirements under 40 C.F.R. § 82.174(a).

C. EPA issued a Finding of Violation ("FOV") to Northcutt on June 26, 2014, in which it alleged that Northcutt introduced substitutes for ozone-depleting substances into interstate commerce, while failing to comply with the SNAP requirements under 40 C.F.R. § 82.174(a).

D. Defendant has denied, and continues to deny, all violations alleged in the FOV and Complaint.

E. Defendant does not admit any fact or liability arising out of the transactions or occurrences alleged in the FOV and Complaint. Defendant retains the right to controvert in any subsequent proceedings, other than proceedings to enforce this Consent Decree, any and all issues of fact or law arising out of the transactions or occurrences alleged in the FOV and Complaint.

F. The United States and Defendant ("the Parties") recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in

good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CAA Section 113(b), 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendant resides within this District and the violations alleged in the Complaint occurred within this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this District.

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

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

III. APPLICABILITY

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

5. No transfer of ownership or operation of Defendant's facility located at 5055 North Broadway Street, Wichita, KS (the "Facility"), whether in compliance with the procedures

of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the District of Kansas, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any Contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

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

IV. DEFINITIONS

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

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

b. "Consent Decree" or "Decree" shall mean this Decree and any appendices attached hereto;

c. "Contractor" shall mean any person or entity with whom or which Defendant enters into a contract that relates to Defendant's implementation of or compliance with this Decree;

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

e. "Date of Lodging" shall mean the Day on which this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the District of Kansas, Wichita Division, before the opportunity for public comment referenced in Section XVIII;

f. "Defendant" shall mean Northcutt, Inc.;

g. "Domestic Refrigerant Product" shall mean any refrigerant product marketed for or sold in interstate commerce in the United States. This definition does not include a refrigerant product marketed for or sold to a party not located in the United States and which will not be used in the United States;

h. "Effective Date" shall have the definition provided in Section XIV;

i. "EPA" shall mean the United States Environmental Protection Agency;

j. "Facility" shall mean Defendant's facility located at 5055 North Broadway Street, Wichita, Kansas from which it marketed, distributed, and sold refrigerants;

k. "Finding of Violation" or "FOV" shall mean the Finding of Violation issued by EPA Region 5 dated June 26, 2014 and attached hereto as Appendix B;

l. "Interest" shall mean interest at the rate determined pursuant to 28 U.S.C. § 1961;

m. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

n. "Parties" shall mean the United States and Defendant;

o. "Section" shall mean a portion of this Decree identified by a Roman numeral; and

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

V. CIVIL PENALTY

9. Defendant shall pay to the United States the principal sum of $100,000.00 as a civil penalty, plus an additional sum of Interest as explained below. Payment shall be made in the following three installments: Defendant shall pay (1) the first installment of $50,000 within 30 Days of the Effective Date; (2) the second installment of $25,000 (plus accrued Interest) within 120 Days of the Effective Date; and (3) the third installment of $25,000 (plus accrued Interest) within 180 Days of the Effective Date. Each of these three installments, except for the first, shall include the principal amount due for that installment plus an additional sum for accrued Interest on the installment amount calculated from the Effective Date. Defendant shall have the right to pre-pay any and all installments, including any accrued Interest, without any penalty for such pre-payment.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Kansas after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Bill Q. Johnston, Jr.
President
Northcutt, Inc.
5055 N. Broadway Street
Wichita, KS 67219
bjohnston@northcutt.org
(316) 838-1477

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

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII, and (iii) to EPA Region 5 in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Northcutt, Inc. and shall reference the civil action number, CDCS Number, and DOJ Case No. 90-5-2-1-11181

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

VI. COMPLIANCE REQUIREMENTS

12. Defendant shall not manufacture, market, advertise, sell, or distribute any Domestic Refrigerant Product, including those known as HC-12a, HC-22a, or HC-502a, unless and until Defendant has fully complied with Section 612 of the Act, 42 U.S.C. § 7671k, and the SNAP Program regulations, 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184.

13. Within 15 Days of the Effective Date, Defendant shall send notification letters by mail to all known past purchasers of any Domestic Refrigerant Product sold by Defendant. A copy of such letter is attached to this Consent Decree as Appendix A. Within 30 Days of the Effective Date, Northcutt shall submit to EPA one copy of each such notification letter mailed to any known past purchaser.

VII. STIPULATED PENALTIES

14. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, according to all applicable requirements of this Decree, and within the specified time schedules established by or approved under this Decree.

15. Late Payment of Civil Penalty. Defendant shall pay a stipulated penalty of $1,000 per Day, in addition to Interest, for each Day Defendant fails to pay any installment of the civil penalty required to be paid under Section V (Civil Penalty) when due.

16. Refrigerant Sales. Defendant shall pay a stipulated penalty of $10,000 per Day for each Day Defendant manufactures, markets, advertises, sells, or distributes any Domestic Refrigerant Product, including those known as HC-12a, HC-22a, or HC-502a, without full

compliance with Section 612 of the Act, 42 U.S.C. § 7671k, and the SNAP Program regulations, 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184.

17. Notification Letter. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraph 13:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th Day
$1,000	15th through 30th Day
$2,500	31st Day and beyond

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

19. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand, subject to the provisions of this Section VII (Stipulated Penalties) and of Section IX (Dispute Resolution).

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

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

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

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

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

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

24. The payment of penalties and Interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

25. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's 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.

VIII. FORCE MAJEURE

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

27. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health,

welfare, or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's Contractors knew or should have known.

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

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

30. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 26 and 27.

If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

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

32. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

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

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

35. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

36. 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 or this Court.

37. Standard of Review. Except as otherwise provided in this Consent Decree, Defendant shall bear the burden of demonstrating based upon substantial evidence that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law.

38. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 21. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

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

40. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following:

(a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to this Consent Decree which show compliance or noncompliance with this Consent Decree shall be withheld on grounds of privilege. No factual information may be withheld as privileged.

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

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

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

44. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the

rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions.

45. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

46. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 43.

47. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, or with any other provisions of federal, state, or local laws, regulations, or permits.

48. 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.

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

XII. COSTS

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

XIII. NOTICES

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

As to the United States by email:	eescdcopy.enrd@usdoj.gov Re: DJ # 90-5-2-1-11014
As to the United States by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-5-2-1-11014
As to EPA:	Air and Radiation Division EPA Region 5 77 W. Jackson Blvd. (AE-17J) Chicago, IL 60604

Attn: Compliance Tracker

and

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

For courtesy purposes only, electronic copies to:
gross.louise@epa.gov
topinka.natalie@epa.gov

As to Defendant:

Bill Q. Johnston, Jr.
President
Northcutt, Inc.
5055 N. Broadway Street
Wichita, KS 67219
bjohnston@northcutt.org

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

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

XIV. EFFECTIVE DATE

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

XV. RETENTION OF JURISDICTION

55. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

56. 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.

57. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 37, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

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

59. 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 or joint motion terminating the Decree.

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

XVIII. STIPULATION AND AGREED ORDER THAT SURVIVES TERMINATION

61. The provisions in this Section shall survive termination of the Consent Decree pursuant to Section XVII (Termination) and shall constitute an agreed order, enforceable by the United States in a subsequent action.

62. Defendant shall not manufacture, market, advertise, sell, or distribute any Domestic Refrigerant Product, including those known as HC-12a, HC-22a, or HC-502a, unless and until Defendant has fully complied with Section 612 of the Act, 42 U.S.C. § 7671k, and the SNAP Program regulations, 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184.

63. Defendant shall pay a stipulated penalty of $10,000 per Day for each Day Defendant manufactures, markets, advertises, sells, or distributes any Domestic Refrigerant Product, including those known as HC-12a, HC-22a, or HC-502a, without full compliance with Section 612 of the Act, 42 U.S.C. § 7671k, and the SNAP Program regulations, 40 C.F.R. Part 82, Subpart G §§ 82.170-82.184.

XIX. PUBLIC PARTICIPATION

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

XX. SIGNATORIES/SERVICE

65. Each undersigned representative of Defendant, EPA, and the Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

67. 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. The parties acknowledge that there are no representations, agreements, or understandings, relating to the settlement other than those expressly contained in this Consent Decree.

XXII. FINAL JUDGMENT

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

XXIII. APPENDICES

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

"Appendix A" is the customer letter;

"Appendix B" is the Finding of Violation.

Dated and entered this __ day of _____, 2016

_____
ERIC. F. MELGREN
United States District Judge
District of Kansas

Signature page for Consent Decree in *United States v. Northcutt, Inc.* (D. Kan.)

FOR THE UNITED STATES OF AMERICA:

Nov. 17, 2015
Date

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

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

BARRY GRISSOM
United States Attorney
District of Kansas

EMILY METZGER
Assistant United States Attorney
1200 Epic Center
301 N. Main St.
Wichita, KS 67202

Signature page for Consent Decree in *United States v. Northcutt, Inc.* (D. Kan.)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

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

T. LEVERETT NELSON
Regional Counsel
U.S. Environmental Protection Agency, Region 5

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

Signature page for Consent Decree in *United States v. Northcutt, Inc.* (D. Kan.)

FOR NORTHCUTT, INC:

10/27/15
Date

BILL Q. JOHNSTON, JR.
President
Northcutt, Inc.
5055 N. Broadway Street
Wichita, KS 67219

Appendix A

Dear Northcutt Customer:

We are sending you this letter because you have been identified as a past purchaser of HC-12a, HC-22a, or HC-502a. The United States Environmental Protection Agency ("EPA") has requested that I send you this letter to notify you of EPA's concerns regarding safety hazards and legal restrictions regarding the use of ***flammable*** hydrocarbon refrigerants as substitute or retrofit refrigerants for ***non-flammable*** ozone depleting refrigerants such as R-12, R-22, and R-502. EPA is concerned that the use of flammable hydrocarbon refrigerants as a direct replacement or retrofit for non-flammable refrigerants in equipment not designed and approved for such use may create a risk of fire or explosion.

Additionally, EPA asks that we advise you that there are certain applicable legal restrictions to the use of flammable hydrocarbon replacement refrigerants. Many older refrigerants, including R-12, R-22, and R-502, are ozone depleting substances ("ODS"). ODS are being phased out of production and importation because they deplete the Earth's stratospheric ozone layer. As part of the United States' transition away from ODS, EPA's Significant New Alternatives Policy ("SNAP") Program evaluates and approves substitute refrigerants so that they can safely and legally replace ODS. EPA evaluates these potential substitute refrigerants according to health, safety, and environmental criteria described in the SNAP regulations.

EPA's SNAP Program has approved HC-12a as an ODS substitute only for industrial processing use, and has not approved HC-22a or HC-502a as ODS substitutes. EPA contends that Northcutt's domestic refrigerant products are subject to the SNAP regulations. Northcutt contends that its domestic refrigerant products are not subject to the SNAP regulations. Where ODS substitutes are approved by SNAP, they are strictly limited to approved use conditions. EPA has informed us that if you sell, distribute, manufacture, market, or use a direct ODS substitute without SNAP approval or outside any SNAP Program-approved uses, you are doing so in violation of SNAP Regulations and the Clean Air Act. EPA has also stated that flammable hydrocarbon refrigerants should not be used in appliances not specifically designed for their use, and likewise to advise any of your customers regarding the potential risks associated with such use.

Consistent with Northcutt's previous flammability warnings, Northcutt requests that you follow EPA's above flammability safety recommendations when handling domestic refrigerant products. Additional information on these issues may be found at http://www.epa.gov/ozone/snap/.

Thank you,

[Name]
[Title]
Northcutt, Inc.

Appendix B

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

JUN 26 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bill Johnson, Jr.
Northcutt, Inc.
5055 N. Broadway Street
Wichita, Kansas 67219

Dear Mr. Johnson:

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

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

We are offering you an opportunity to confer with us, either in person or by telephone, about the violations cited in the FOV. The conference will give you the opportunity to present information on the specific findings of violations, the efforts you have taken to comply and the steps you will take to prevent future violations.

Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Katie Owens. You may call her at (312) 886-6097 to request a conference. You should make the request within 10 calendar days after receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

George T. Czerniak
Director
Air and Radiation Division

cc: Mark Smith, U.S. EPA, Region 7
Randy Owen, Kansas Department of Health & Environment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Northcutt, Inc.	)	
Wichita, Kansas	)	**FINDING OF VIOLATION**
	)	
Proceedings Pursuant to	)	**EPA-5-14-COE-02**
the Clean Air Act	)	
42 U.S.C. § 7401 *et seq.*	)	
	)	

FINDING OF VIOLATION

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

Statutory and Regulatory Background

1. Section 612 of the CAA, 42 U.S.C. § 7671k, authorizes EPA to identify, review and restrict the use of substitutes for "Class I" and "Class II" ozone-depleting substances (ODS).

2. Under Section 602(b) of the CAA, 42 U.S.C. § 7671a(a), Congress identified "CFC-12" as a "Class I" ODS.

3. Under Section 602(b) of the CAA, 42 U.S.C. § 7671a(a), Congress identified "CFC-115" as a "Class I" ODS.

4. Under Section 602(b) of the CAA, 42 U.S.C. § 7671a(b), Congress identified "HCFC-22" as a "Class II" ODS.

5. Section 612(a) of the CAA, 42 U.S.C. § 7671k(a), requires that, to the maximum extent practicable, Class I and Class II ODS be replaced by chemicals, products substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

6. Under Section 612(c) of the CAA, 42 U.S.C. § 7671k(c), EPA promulgated the SNAP program regulations at 40 C.F.R. Part 82, Subpart G. These regulations establish standards and requirements for the use of Class I and Class II substances used in specific major industrial sectors where a substitute is used to replace an ODS including, among other things, refrigeration and air conditioning. *See* 59 *Fed. Reg.* 13044 (March 18, 1994).

7. Among the purposes of the SNAP regulations is to provide for safe alternatives to ODS. 40 C.F.R. § 82.170(a).

8. Among the objectives of the SNAP program is to identify substitutes for ODS that present lower overall risks to human health and the environment relative to the Class I and Class II substances being replaced. 40 C.F.R. § 82.170(b).

9. Under the SNAP regulations at 40 C.F.R. § 82.176(a), any producer of a new substitute must submit a notice of intent to introduce a new substitute into interstate commerce 90 days prior to such introduction.

10. Under the SNAP regulations at 40 C.F.R. § 82.174(a), no person may introduce a new substitute into interstate commerce before the expiration of 90 days after a notice is initially submitted to EPA under 40 C.F.R. § 82.176(a).

11. Under the SNAP regulations at 40 C.F.R. § 82.172, "substitute or alternative" is defined as "any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II compound."

12. Under the SNAP regulations at 40 C.F.R. § 82.172, "use" is defined as "any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses."

13. Under the SNAP regulations at 40 C.F.R. § 82.172, "person" is defined to include a corporation.

14. Under the SNAP regulations, a substitute is exempt from the notice of intent requirement of 40 C.F.R. § 82.176(a) as a so-called "second generation replacement" only if it is designed to replace a non-ODS substitute that EPA has previously approved and if the original Class I or Class II ODS refrigerant is no longer being used or is no longer available for use. *See* 59 *Fed. Reg.* 13044, 13052.

15. Under the SNAP regulations, it is illegal to use a hydrocarbon refrigerant as a substitute for a Class I or Class II ODS refrigerant for any end use other than industrial process refrigeration systems, or retail food refrigerators and freezers (stand-alone units only). *See* 69 *Fed. Reg.* 11946, 11952 (March 12, 2004), and 76 *Fed. Reg.* 78832 (December 20, 2011).

Factual Background

16. Northcutt is a corporation with a place of business at 5055 N. Broadway Street, Wichita, Kansas (the Wichita facility).

17. At the Wichita facility, Northcutt sells and distributes three products it refers to as "HC-12a," "HC-22a," and "HC-502a," respectively.

18. "HC-12a" is a hydrocarbon refrigerant.

19. "HC-22a" is a hydrocarbon refrigerant.

20. "HC-502a" is a hydrocarbon refrigerant.

21. Northcutt's website states that Northcutt is "manufacturing, blending, packaging & distributing the HC Refrigerant line."

22. The Material Safety Data Sheet for "HC-12a," "HC-22a," and "HC-502a" states that "flammable air vapor mixtures may form if allowed to leak to atmosphere. Accumulation of gas is an ignition hazard. Vapors are heavier than air & may travel to an ignition source. Flashback along vapor trail may occur."

23. Hydrocarbons are flammable substances. *See, e.g.*, http://www.epa.gov/ozone/snap/refrigerants/hc-12a.html

24. Northcutt's website states that the product "HC-12a" "is designed as a drop-in replacement for ozone-depleting CFC R12 and global-warming HFC R134a refrigerant" and "is acceptable as a substitute for CFC 12 in retrofitted and new industrial process refrigeration systems."

25. Northcutt's website states that the product "HC-22a" "is designed as a drop-in replacement for ozone-depleting HCFC R22 refrigerant."

26. Northcutt's website states that the product "HC-502a" "is designed as a drop-in replacement for ozone-depleting CFC R502 refrigerant."

27. R-12 is a non-flammable, Class I, ODS approved by EPA for use as a refrigerant in chillers, industrial process refrigeration systems, ice skating rinks, industrial process air conditioning, cold storage warehouses, refrigerated transport, retail food refrigeration, vending machines, water coolers, commercial ice machines, household refrigerators and freezers, residential dehumidifiers, motor vehicle air conditioning, and heat transfer.

28. R-22 is a non-flammable, Class II, ODS approved by EPA for use in industrial process refrigeration systems, ice skating rinks, cold storage warehouses, retail food refrigeration, residential dehumidifiers, motor vehicle air conditioning, and residential and light commercial air conditioning and heat pumps.

29. R-115 is a non-flammable, Class I, ODS approved by EPA for use in heat transfer.

30. R-502 is a non-flammable, Class I, ODS approved by EPA for use in ice skating rinks, cold storage warehouses, refrigerated transport, retail food refrigeration, vending machines, water coolers, commercial ice machines, and household refrigerators and freezers.

31. R-12 is another name for CFC-12. http://www.epa.gov/ozone/geninfo/numbers.html

32. R-22 is another name for HCFC-22. http://www.epa.gov/ozone/geninfo/numbers.html

33. R-115 is another name for CFC-115. http://www.epa.gov/ozone/geninfo/numbers.html

34. R-502 is composed of 48.8% R-22 and 51.2% R-115. http://www.epa.gov/ozone/snap/refrigerants/refblend.html

35. EPA has not approved "HC-12a" as a substitute for R-12 or CFC-12.

36. EPA has not approved "HC-22a" as a substitute for R-22 or HCFC-22.

37. EPA has not approved "HC-502a" as a substitute for R-502.

38. Northcutt introduced "HC-12a" into commerce before the expiration of 90 days after a notice of intent has been initially submitted to EPA.

39. Northcutt introduced "HC-22a" into commerce before the expiration of 90 days after a notice of intent has been initially submitted to EPA.

40. Northcutt introduced "HC-502a" into commerce before the expiration of 90 days after a notice of intent has been initially submitted to EPA.

41. The original Class I substance that "HC-12a" is intended to replace, CFC-12, is still available for use as a refrigerant and is used throughout the industry.

42. The original Class II substance that "HC-22a" is intended to replace, HCFC-22, is still available for use as a refrigerant and is commonly used throughout the industry.

43. The original Class I substance that "HC-502a" is intended to replace, R-502, is still available for use as a refrigerant and is used throughout the industry.

Conclusions of Law

44. Northcutt is a "person" under the SNAP regulations.

45. "HC-12a" is a product substitute intended for use as a replacement for a Class I or Class II compound, and thus a "substitute," as defined by the SNAP regulations at 40 C.F.R. § 82.172.

46. "HC-22a" is a product substitute intended for use as a replacement for a Class I or Class II compound, and thus a "substitute," as defined by the SNAP regulations at 40 C.F.R. § 82.172.

47. "HC-502a" is a product substitute intended for use as a replacement for a Class I or Class II compound, and thus a "substitute," as defined by the SNAP regulations at 40 C.F.R. § 82.172.

48. Northcutt's introduction of "HC-12a" into interstate commerce before the expiration of 90 days after a notice of intent has initially been submitted to EPA constitutes a violation of 40 C.F.R. § 82.174(a).

49. Northcutt's introduction of "HC-22a" into interstate commerce before the expiration of 90 days after a notice of intent has initially been submitted to EPA constitutes a violation of 40 C.F.R. § 82.174(a).

50. Northcutt's introduction of "HC-502a" into interstate commerce before the expiration of 90 days after a notice of intent has initially been submitted to EPA constitutes a violation of 40 C.F.R. § 82.174(a).

Risks to Human Health and the Environment

51. The use of "HC-12a," a hydrocarbon refrigerant, in unapproved uses, as a substitute for R-12 creates the potential for explosion and fires. As such, it presents a serious risk to human health and the environment.

52. The use of "HC-22a," a hydrocarbon refrigerant, in unapproved uses, as a substitute for R-22 creates the potential for explosion and fires. As such, it presents a serious risk to human health and the environment.

53. The use of "HC-502a," a hydrocarbon refrigerant, in unapproved uses, as a substitute for R-502 creates the potential for explosion and fires. As such, it presents a serious risk to human health and the environment.

Finding of Violation

54. For the above reasons, EPA finds that Northcutt has violated the SNAP regulations at 40 C.F.R. § 82.174(a).

6/26/14
Date

George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-14-COE-02, by Certified Mail, Return Receipt Requested, to:

Mr. Bill Johnson, Jr., President
Northcutt, Inc.
5055 N. Broadway Street
Wichita, Kansas 67219

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

Phillip Brooks
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 2242A
Washington, D.C. 20460

On the 27 day of June 2014.

Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0185 9989