California, as well as in the rest of the country. Currently, as reported in Platts Gas Daily, the spot price of natural gas at the California border is less than $3.00, which is generally in line with the spot price elsewhere in the country and, in fact, lower than the price at some city gates in the East. Similarly, the monthly California Regional Average contract index price reported in Platts Gas Daily Price Guide was $2.44,[5] while the National Average price was $2.34.[6]

While the July 25 order stated the Commission intended to seek approval from OMB to extend the reporting requirement, market conditions, as shown above, have subsequently changed dramatically. As a result, the reason for imposing a special reporting requirement for sales of natural gas to the California market—that the California market is suffering unique difficulties—has largely disappeared. Furthermore, since the price of natural gas in California for the past few months has remained fairly stable and has not shown any significant disparity from the price of gas in the rest of the country, the continued collection and analysis of data relating to the California market is unlikely to add incrementally to what is being learned from the initial six months of data. Thus, at this time there is no reason to extend a special reporting requirement with respect to gas sales in only California, when there is no similar reporting requirement in other parts of the country.

The Commission is currently undertaking a comprehensive review of the information it should collect in order to monitor energy markets throughout the country. Since the crisis in California has now ceased, the Commission concludes that any further reporting requirement covering the California gas market is best developed as part of this comprehensive review of reporting requirements of all energy markets.

On December 11, 2001, Indicated Shippers,[7] who are certain major producers and marketers subject to the California reporting requirement, filed a petition requesting that the Commission not extend the reporting requirement beyond the current expiration date.[8] The basis of the petition was similar to the discussion above that the current market conditions in the California gas market do not justify extending the reporting requirement for gas sales in that market.[9] The California Electricity Oversight Board filed a protest to the petition asserting that current market conditions were irrelevant because ''there is no principled reason to assume that current market stability inherently eliminates future abuse of California's natural gas market.''[10]

The Commission has concluded that the reason for imposing a special reporting requirement for sales of gas in the California market no longer exists. While there is no guarantee that the disparity in the prices could not again occur, at this time there is no basis to assume that it will. We are well into the winter season, and the California gas market has not exhibited any conditions that now warrant imposing the reporting requirement there, as compared to any other market. Thus, the concern by the California Electricity Oversight Board that the price disparity could reoccur, is not a sufficient reason to extend the reporting requirement. However, should the price disparity reoccur, the Commission will be in a better position to determine what action it should take as a result of the submissions to date.

The Commission concludes that extending a reporting requirement that is limited to the California market would not further the Commission's goal of achieving more transparency of the national energy market. The Commission's decision not to extend the reporting requirement at this time does not represent any lessening of the Commission's intent to closely monitor that market, but reflects the Commission's conclusion that since the crisis that led to the imposition of the reporting requirement has ceased, the resources that would have to be devoted to the extension, would be better utilized in other areas, particularly the more comprehensive ongoing review of data collection by the Commission, discussed above.

Accordingly, the Commission will not seek an extension of the existing reporting period.

By direction of the Commission. Chairman Wood and Commissioner Brownell concurred with a separate statement attached.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission

[Docket No. RM01–9–000]

Reporting of Natural Gas Sales to the California Market

Issued January 30, 2002.

WOOD, Chairman, and BROWNELL, Commissioner, *concurring:*

We write separately to add that the data collected thus far has provided the Commission with valuable information on how the California natural gas market operates, such as, the proportion of sales in California under long and short-term contracts, the extent to which the prices in gas sales contracts are fixed, the extent of utilization of interstate transportation capacity to California, the nature of the purchasers under the sales contracts (e.g., marketers, LDCs, or end users), and also the approximate proportion of sales in the California market that are subject to the Commission's jurisdiction. This information will provide a reference point that will enable the Commission to effectively craft a more focused reporting requirement should it appear that a price disparity may again resurface in the California market and such a reporting requirement is needed. More importantly, it provides us useful information for our current effort to comprehensively revise all of our reporting requirements to reflect the present state of the energy markets.

Pat Wood, III,
Chairman.

Nora Mead Brownell,
Commissioner.

[FR Doc. 02–2818 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–2]

Equipment Containing Ozone Depleting Substances at Industrial Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Bakery Partnership Program and response to comments.

SUMMARY: The Environmental Protection Agency announces a unique voluntary Partnership Program for the baking industry. Commercial bakeries use large quantities of chlorofluorocarbons and other chemicals that contribute to depletion of the ozone layer in industrial process refrigeration appliances. Failure to comply with the stringent leak detection and repair requirements under 40 CFR part 82 of the regulations implementing Title VI of

[5] Platt's Gas Daily Price Guide defines the contract index price as the weighted average cost of gas based on volume and prices for baseload deals done within the last five working days of the month.

[6] In September the California Regional Average was $2.58, while the National Average was $2.31. In November, the California Regional Average was $2.93, and the National Average was $3.08.

[7] Indicated Shippers consists of Aera Energy LLC, Amoco Production Company, BP Energy, Burlington Resources Oil & Gas Company, Conoco Inc., Coral Energy Resources LP, Occidental Energy Marketing Inc., and Texaco Natural Gas Inc.

[8] Indicated Shippers also asserted that compliance required each company to expend approximately 15 hours per month, and this burden should not be imposed when the reason for the reporting requirement no longer existed.

[9] Dynegy Marketing and Trade filed comments in support of the petition.

[10] Protest at 3.

the Clean Air Act can result in the release of tens of thousands of pounds of ozone-depleting chemicals to the atmosphere, and expose companies to enforcement liability.

Accordingly, EPA is offering incentives for those commercial bakeries that agree to reduce or eliminate leaks of ozone-depleting substances (ODS) used in refrigeration equipment. Companies that elect to participate agree to audit certain appliances, comply with leak detection and repair requirements, and phaseout Class I industrial process refrigeration appliances and thus qualify for reduced penalties and a waiver of civil liability for past violations. Penalties are reduced even further (in some cases eliminated) for companies that replace existing refrigeration units with systems that use non-ozone depleting chemicals.

The terms of the agreement allow companies a high degree of choice in designing the most cost-effective compliance strategy and considering whether to switch to non-ODS systems. EPA encourages companies to take advantage of this voluntary partnership, which offers an economical way to protect the atmosphere and assure compliance with the Clean Air Act.

This announcement indicates how EPA expects to exercise its enforcement discretion in settling potential past violations of 40 CFR part 82 with companies that elect to participate, and which agree to meet certain conditions. It is designed to help companies assess their liabilities and determine whether it is reasonable to audit and correct violations in return for reduced penalties and a waiver of past civil liability. The use of the terms ''must'' and ''shall'' establish presumptions as to the terms and conditions and EPA's response. As always, EPA reserves the right to exercise its discretion differently if presented with unusual or compelling circumstances. This notice establishes no new rights or obligations on behalf of EPA or any other party, except to the extent specific terms are agreed to in administrative orders on consent.

On December 10, 2001, the Environmental Protection Agency [EPA] published a proposed voluntary program for the baking industry and sought comments. The comment period has closed and comments have been received. The proposed Bakery Partnership Program has been revised in several ways based on the helpful comments. Some comments have been editorial in nature, providing clarifying language which have been adopted. Others have been more substantive, most of which have been incorporated into this final announcement.

The most important change is that EPA agrees with the comment that the starting date for the program should be moved forward from March 15, 2002 to April 26, 2002. In addition, EPA agrees with the comment that an alternative dispute resolution mechanism should be available if the informal attempts to resolve disagreements are not successful, and believes that this mechanism is the most appropriate means to resolve those few factual disputes that may arise. EPA also agrees that Class I units should have the option of shutting down these units rather than converting them.

Participation in the partnership program is purely voluntary, and this is not a rule, but it does combine the advantages of predictability and reduced penalties with incentives to move away from the use of ozone depleting substances (ODS). Participating companies will be asked to agree to phaseout use of the more hazardous Class I ODS by July 15, 2003, reflecting the fact that use of these substances is being rapidly phased out under existing rules. Bakeries that have installed non-ODS systems by April 26, 2002, can avoid all penalties under this agreement. Bakeries that install non-ODS systems after that date but no later than July 15, 2004 (unless an extension is granted) are limited to penalties of $10,000 per appliance. All other appliances that do not install non-ODS systems must pay a per pound penalty for any leaks that cross a high threshold, but again, this per pound penalty can be avoided by conversion to non-ODS systems. Companies already under national investigation for violations are not eligible to participate in this program.

DATES: No more comments are being solicited. Key dates in the program are listed below.

ADDRESSES: Comments and other notices that were or may be received may be reviewed by the public at Bakery Partnership Program, the Docket Clerk, Enforcement and Compliance Docket and Information Center (Mail Code 2201A), Docket Number EC–2001–007, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Other notices under this Bakery Partnership Program may be sent electronically to: *docket.oeca@epa.gov.* Attach electronic notices as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–007 on your document. Notices may also be faxed to (202) 501–1011. Notices may be mailed or delivered in person to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119, with the understanding that confidential business information will not be released to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Garlow, Air Enforcement Division (2242A), US EPA, 1200 Pennsylvania Ave NW., Washington, DC 20460, telephone 202–564–1088.

SUPPLEMENTARY INFORMATION:

Many industries, including most industrial bakeries, use ozone depleting substances [ODS], such as CFCs and hydrochlorofluorocarbons [HCFCs], to cool their products. Like other industrial sources, most industrial bakeries have industrial process refrigeration appliances that are subject to 40 CFR part 82, subpart F. The equipment that produces the product contains CFCs or other ozone depleting substances in jackets around the product. The equipment may sometimes leak these coolants in sizeable quantities into the air, but not into the product. If certain leak rates are exceeded, the company may be required to retrofit or retire the equipment.

EPA has concluded two large industrial process refrigeration enforcement cases, one of which involved a company with bakeries in several states. In both cases, the companies voluntarily chose to replace their industrial process refrigeration appliances with equipment designed to prevent pollution. The ozone depleting coolant was replaced by a cooling system that uses a secondary loop containing a cooling solution, glycol, that is not an ozone depleting substance. Although the primary loop of the refrigeration system may still contain some ozone depleting substances, the quantity is greatly reduced, and the ODS refrigerant is located where vibration and the potential for leaks is greatly reduced. The EPA wants to encourage all companies with industrial process refrigeration appliances that may be leaking to consider a similar pollution prevention approach to ensuring their compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA is inviting the baking industry to participate in a voluntary program to address these potential violations. The

program offers an expedited way for companies to correct past violations and prevent future ones, in return for a release from past liabilities and reduced penalties. The largest trade association representing bakeries has accepted this invitation on behalf of its members. The total number of industrial bakeries is not exactly known yet, but it is believed that there may be over 1000 bakeries in the United States. Each bakery will likely have one or more industrial process refrigeration appliances that are subject to the regulations, such as mixers or chillers, at each bakery. Many of these industrial process refrigeration appliances have already been converted to non-ODS, pollution prevention equipment.

In the interests of promoting fast, efficient and widespread emission reductions, and better compliance with the regulatory structure, EPA intends to offer and enter into agreements with baking companies providing that they:

- Audit their facilities;
- Identify problem areas;
- Pay a greatly reduced penalty, and propose solutions that will protect the environment; and,
- Ensure greater compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA's proposal offers clear and consistent terms to reduce uncertainty and eliminate the need for extended, individualized negotiations. Presented here are the basic elements, illustrations and a chronology of key steps that EPA and participants will be expected to complete. The basic elements of the program are as follows:

- *Notice to EPA.* Bakeries not already the subject of a national enforcement investigation or action, and which had or have industrial process refrigeration appliances containing 50 pounds or more of ODS refrigerants, are eligible to participate. Companies intending to participate should notify EPA by April 26, 2002, and as soon thereafter as possible, but no later than April 30, 2002, submit a signed Bakery Partnership Agreement to EPA. If some of the industrial process refrigeration appliances have been converted to non-ODS systems prior to April 26, 2002, a count of these appliances should also be provided. If, during the audit, a more accurate tally is obtained, an updated notice may be submitted at that time. Annex A contains a sample notice of intent to participate, which can be updated with the number of appliances to be audited by April 30, 2002. It can be sent by electronic mail or postal mail, but electronic mail or e-mail is preferred.
- *Annualized leak rate.* For the purposes of this Partnership Agreement, the annualized leak rate shall be calculated for every instance in which refrigerant was added to the appliance. The leak rate shall be calculated by the formula agreed upon by EPA in its publication, Compliance Guidance for Industrial Process Refrigeration Leak Repair Regulations under Section 608 of the Clean Air Act.
- *Audit.* Participating companies must audit up to June 15, 2003, i.e., assess the compliance status of all their industrial process refrigeration appliances and facilities. They must then report to EPA a summary of their findings, by July 15, 2003. If a company complies with the entire program, EPA intends to grant a release from civil liability for the matters identified and corrected, so long as reduced penalties are paid as described below. However, if violative conduct is not identified and corrected, EPA is not granting any release from civil liability for such problems. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not have been audited. For example, if a facility has installed non-ODS technology on any of their appliances prior to the April 26, 2002 start date for this Partnership Program, such an appliance need not be audited, and a complete release from civil liabilities and penalties will be granted for such appliances. By non-ODS systems, EPA means systems that contain no ODS at all [*e.g.* HFC systems or ammonia systems], or no ODS in the secondary loop, but may contain an ODS in the primary loop. Typically, the ODS in the primary loop [compressor] is a much smaller volume, and is not subjected to the vibration in the process areas that may cause greater leaks. If the primary loop contains less than 50 pounds of ODS, as is frequently the case, then the appliance is exempt from the leak repair regulations. It is still subject, however, to other requirements such as the ''no venting'' requirement of 40 CFR 82.154(a).
- *Class I appliances.* All Class I appliances must be audited and converted either to a non-ODS system, or to a system using an ODS with an ozone depleting potential [ODP] of less than 0.1, or shut down (permanently taken out of service). Class I appliances are those containing Class I controlled substances, listed in appendix A to subpart A of 40 CFR part 82, and include CFC refrigerants (*e.g.,* R–12). Leaks from these Class I appliances are more damaging to the Earth's ozone layer than an equivalent amount of leakage from Class II appliances. The phaseout of the production of CFCs was completed as of December 31, 1995. Since the availability of CFCs will continue to decrease over time, EPA believes that this is a good time to switch to a less ozone-depleting technology. EPA estimates that the vast majority of appliances in this industry have already switched from using Class I ODS to either Class II or non-ODS systems. Participating companies must identify their Class I appliances and submit a plan for shutdown or change/conversion to either the Class II ODS with an ODP of 0.1 or less, such as R–22, or to a non-ODS system. The audits must be completed and plans must be submitted to EPA by July 15, 2002. An Administrative Order on Consent [AOC] will incorporate a company pledge to complete the audits of Class II appliances and to submit plans, if needed, for those appliances by July 15, 2003 and pay penalties as specified in the agreement. EPA expects the plans for Class I appliances to be fully implemented by July 15, 2003, but may grant additional time in exceptional circumstances pursuant to 40 CFR 82.156(i)(7).
- *Class II appliances.* All Class II appliances must be audited by June 15, 2003. Class II appliances are those containing Class II controlled substances, listed in appendix B to subpart A of 40 CFR part 82 (including all HCFC refrigerants, such as R–22). If any of these appliances are being changed/converted to non-ODS systems, then plans to accomplish this must be submitted by July 15, 2003 as agreed to in the July 2002 AOC.
- *CAFO.* EPA will issue to participating companies, pursuant to the authority of Section 113(d) of the Clean Air Act, Compliance Agreement Final Orders [CAFOs] that reflect the audit findings, implementation plans and schedule of corrections, any reduced penalties that must be paid, and a release from civil liability conditioned on completion of the implementation plans and corrections. EPA will issue CAFOs at the completion of all audits in July of 2003. If a company has only Class I appliances, EPA will issue the CAFO in July of 2002. Companies must also commit to compliance with all regulations.
- *Plan Implementation.* By July 15, 2003 for Class I appliances and by July 15, 2004 for Class II appliances, all plans for equipment changes/conversions should be completely implemented, unless extensions are granted pursuant to 40 CFR 82.156(i)(7).
- *Program Completion.* By July 15, 2004 or such later date when all

conversions are completed, the participating company will notify EPA and EPA will respond with a confirmation letter acknowledging the completion of the Bakery Partnership Program.

Penalties

• *Per appliance penalty.* A penalty of $10,000 shall be paid for each ODS containing appliance, regardless of whether violations are identified or not, except that no penalties are due for any appliance converted to a non-ODS system before April 26, 2002. No bakery facility must pay more than $50,000 in these penalties. This penalty will be paid with other penalties no later than 30 days after receipt of the CAFO.

• *Per pound penalties.* Additional ''per pound'' penalties for all appliance leaks discovered during the audit, occurring after a 35% annualized leak rate, must be calculated on a 12-month basis, beginning when the auditing period starts, *i.e.,* September 30, 2000. At the end of the 12-month period following a 35% annualized leak rate, per pound penalty calculations cease, unless a subsequent 35% annualized leak rate is discovered, in which case another 12 month period of calculation begins. Per pound penalty calculations end June 15, 2003.

• *No per pound penalties for replacement with non-ODS system.* Switching to a non-ODS system is encouraged. If a participating company agrees to replace an ODS system with a non-ODS system in an appliance, no ''per pound'' penalties need be paid for that appliance. If a company is facing high per pound penalties for a particular appliance but has decided that it does not make technical or economic sense for the company to convert that particular appliance to a non-ODS system, it may instead substitute another appliance[s] and still avoid the per pound penalties for the first appliance. The first appliance, however, must still be brought into full compliance. This ''bubbled compliance'' concept would allow a company to substitute the first appliance with another appliance or appliances that have 120% of the full charge of the appliance that will not be changed/converted to a non-ODS system. For example, if a 1000 pound appliance has very high per pound penalties that the company wishes to avoid, it may avoid those penalties either by converting this appliance to a non-ODS system, or by converting one or more other ODS containing appliances [that were not already required to convert to non-ODS systems] that have a total charge of at least 1200 pounds. This could be one other appliance with a full charge of 1200 pounds, or two appliances of 600 pounds each, or some other combination of appliances that total at least 1200 pounds of refrigerant. If the two 600 pound appliances in this example had per pound penalties of their own, those penalties would still be due, unless some other appliance or appliances in turn were converted to non-ODS systems in their stead, at the 1.2 to 1 ratio, as described above.

• *Start-up period.* No leaks will be counted as part of the per pound calculation for the period 60 days after a new installation or after an appliance is changed/converted to a non-ODS or lower than 0.1 ODP system, considered as a ''start up'' period.

• *Per pound amounts.* Per pound penalties will be calculated per appliance as follows: $20 per pound up to 500 pounds, $30 per pound for 501–1000 pounds and $40 per pound for the pounds over 1000, during each 12 month period after a 35% annualized leak rate is identified.

In summary, to participate in the Partnership Program, all sources must achieve and maintain full compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F. In addition, appliances using Class I substances must be audited and changed/converted. Appliances using Class II substances must be audited. Owners of Class I and II appliances may elect to convert to non-ODS systems to avoid paying fees for higher leaks. Each company will sign an Administrative Order on Consent [AOC] on or before July 15, 2002 and sign a Consent Agreement Final Order [CAFO] on or before July 15, 2003, which will specify a conditional waiver of liability. These are the main points of interest in this Partnership Agreement. There are some other minor details that are mentioned in the Partnership Agreement and the other Annexes, which should be self-explanatory. Other approaches to achieving the objectives of this program were considered by EPA and the industry representatives, but this approach was chosen as being the best from the point of view of administrative ease of implementation and environmental improvement.

Here Is an Example of What a Participating Company May Encounter During Participation in This Partnership Agreement

If a company is eligible and wants to participate, it should send a notice to EPA by April 26, 2002, identifying the company and its facilities. If this company has five bakeries and five appliances in each bakery, for a total of 25 appliances, seven of which have been converted to a non-ODS system prior to April 26, 2002, then there will be a $10,000 penalty per appliance for the 18 ODS containing appliances. This company will, however, get a release from civil liability for all 25 appliances for problems identified and corrected. The company is best advised to pay particular attention to their Class I appliances, if any, as audits must be conducted and a decision on these appliances must be made by July 15, 2002. If there are four Class I appliances, these should be audited first to determine what per pound ''penalties'' may be due for these appliances. If the per pound penalties determined from this audit indicate that a large per pound penalty may be due for several of these appliances, then this may be persuasive in deciding to convert these appliances to a non-ODS system in order to avoid the per pound penalties. If, instead, the company chooses to convert some or all of the Class I appliances to a Class II ODS refrigerant with an ODP of less than 0.1, rather than a non-ODS system, then the per pound penalties will still be due and payable by 30 days after receipt of the CAFO, which should be shortly after July 2003. Auditing and calculation of per pound penalties should continue through June 15, 2003 to ensure continued compliance and lowered emissions.

By July 15, 2002, the company must prepare a plan and submit this plan to EPA, indicating which of the appliances are the Class I appliances, and what changes or conversions the company pledges to make to them, with a schedule for the work anticipated. The company should submit, along with the plans, the auditing summaries for the Class I appliances [see the sample below]. EPA will incorporate the plans for these four Class I appliances, along with the company's pledge to continue auditing the other appliances and to prepare and submit plans for them within a year in an Administrative Order on Consent [AOC], which should be signed by the company and then by EPA. EPA will return a copy of the signed AOC to the company.

For the other Class II appliances, a similar audit of compliance should begin, covering the period from September 30, 2000 until June 15, 2003. Per pound penalties, if any, should be calculated for these appliances. As with the Class I appliances, if the company wishes to avoid paying these per pound penalties, it may do so by agreeing to convert the Class II systems to non-ODS systems. The company should make that decision and submit plans, if any, for

such conversions to EPA by July 15, 2003. These plans will be incorporated in the CAFO. EPA expects that these plans will be implemented by July 15, 2004, with the possibility of extensions if additional time is needed.

When calculating per pound penalties, this company should look at each appliance and calculate its per pound penalties, if any. If, for example, the first Class I appliance had a 50% annualized leak rate in October 2000 and thereafter in the next 12 months had small and large leaks totaling 1500 pounds, then the per pound penalty for these 1500 pounds would be calculated as follows: $20 per pound for the first 500 pounds or $10,000; $30 per pound for pounds 501–1000 or $15,000; and $40 per pound for pounds 1001–1500 or $20,000. Thus, the total for this 12-month block period would be $45,000 [$10,000 + $15,000 + $20,000]. If a large leak rate was discovered in December 2000, that does not start another 12-month block period up to December 2001, as this is a leak inside the October 2000–2001 12-month period. If after October 2001 this same appliance had another annualized leak greater than 35%, for example, a 90% annualized leak rate, then leaks after that point would be calculated as above and added to the $45,000 total. This process should continue through June 15, 2003 and a total per pound penalty should be calculated for this appliance, and for all other appliances. The company then has the option of paying this per pound penalty or avoiding it by submitting a plan for converting to a non-ODS system. EPA hopes that this financial incentive will cause more companies to choose conversion to non-ODS systems while still giving the company the flexibility to decide which option is best for it.

On July 15, 2003, the company should submit audit summaries and plans for any equipment changes/conversions that it intends to make to the Class II appliances. It should also be prepared to pay any penalties that may be due shortly after the CAFO, signed by both parties, is received by the company. EPA will also prepare a CAFO with the release from civil liability for all matters that the company has identified as being a potential problem and corrected. This listing of problems discovered by the audit can be included in the plan for equipment changes/conversions or can be listed separately. It can include matters such as technician certification, better recordkeeping systems, equipment certifications, etc. Problem areas, or violations, not so identified and corrected will not receive a release from liability, so it is very important to identify all these problem areas and correct all these problems. EPA may inspect and request information to ensure that the audits are being conducted fully and properly.

By July 15, 2004, the company will have completed the equipment changes/conversions, unless more time is needed, and corrected other problems identified in the audit. The company will send a letter certifying that all these matters have been attended to, and EPA will reply accepting this certification and thanking the company for participating. This is the end of the program for this company.

Key Dates

September 30, 2000

Begins period of compliance audit and monthly measurement of annual leak rates from industrial process refrigeration appliances for all partnership participants.

''Look-back'' period gives credit to companies that have taken steps to improve leak management.

April 26, 2002

Notice of intent to participate in Partnership Program is due. Name and address of facilities. All penalties waived for appliances that have been converted to non-ODSs by April 26, 2002.

Program open to all companies not subject of national enforcement investigation.

April 30, 2002

Companies must identify charging capacity and location of all appliances using over 50 lbs of Class I or Class II ODS, and those which have converted to use of non-ODS refrigerant in primary loop by April 26, 2002.

Companies commit, by signing the Bakery Partnership Agreement, to complete audit and submit implementation plans by July 15, 2002, to convert Class I appliances to at least Class II, and to pay stipulated penalties or switch to non-ODS refrigeration appliances by July 15, 2003 (unless extension granted).

July 15, 2002

EPA issues administrative order/information request on consent [AOC] to participating companies reflecting company's commitment to complete audit by June 15, 2003 and submit implementation plans for Class II appliances by July 15, 2003.

Companies that have switched all appliances to non-ODS by April 26, 2002 may receive compliance agreement/final order (CAFO) discharging all liabilities for past violations without payment of penalty.

June 15, 2003

Audits are completed.

July 15, 2003

Bakeries submit audit results and final implementation plans.

Bakeries pay stipulated penalties for the 12 months following any single month in which annualized leak rate exceeds 35%, but:

—Bakeries can avoid stipulated penalties if implementation plan commits to replace leaking appliance with non-ODS system no later than July 15, 2004 (unless program grants extension).

—Bakeries can ''bubble'' by substituting ODS conversion at another appliance (must have charge 120% greater than leaking appliance).

All Class I ODS appliances must convert to at least Class II ODS appliances by July 15, 2003, unless program grants extension.

EPA issues compliance agreement/final order [CAFO] reflecting conversion to Class II or non-ODS systems, and payment of stipulated penalties.

July 15, 2004

Bakeries must complete conversion to non-ODS systems reflected in implementation plans, unless program has granted an extension.

Key Definitions

Annualized leak rate—(pounds of refrigerant added/pounds of full charge) × (365 days/# days since refrigerant last added) x 100%.

Appliance—industrial process refrigeration device containing 50 pounds or more of ODS refrigerants.

Class I—an ODS listed in appendix A to 40 CFR part 82, subpart A.

Class II—an ODS listed in appendix B to 40 CFR part 82, subpart A.

ODS—ozone depleting substance.

Facility—a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's wholesale baking/bakery business, and containing at least one appliance as defined in this agreement.

Non-ODS system—systems that contain no ODS at all [e.g. HFC systems or ammonia systems] or no ODS in the secondary loop, but may contain an ODS in the primary loop.

Additional Sources of General Information

To find out more about compliance with Title VI of the Clean Air Act,

access the EPA's web site at *www.epa.gov/ozone*. The EPA and the Chemical Manufacturer's Association (CMA) have developed a guidance document entitled Compliance Guidance For Industrial Process Refrigeration Leak Repair Regulations Under Section 608 of the Clean Air Act [see *http://www.epa.gov/ozone/title6/608/compguid/compguid.html*] that provides greater detail than the discussion on the EPA web site. The guidance document is intended for those persons who are responsible for complying with the requirements. The guidance should not be used to replace the actual regulations published in the **Federal Register** on August 8, 1995 (60 FR 40420) [see *http://www.epa.gov/spdpublc/title6/608/leakfrm.txt*] ; however, it can act as a supplement to explain the requirements. Reliance on this guidance alone will likely not result in compliance. Another useful web site is one pertaining to general leak repair: *http://www.epa.gov/ozone/title6/608/leak.html*. EPA has also made available a sample inspector's checklist to the trade association, which is available online at *http://www.epa.gov/ozone/title6/608/compguid/compguid.html* or *http://www.epa.gov/oeca/ore/aed/bakery/index.html* or by contacting the Ozone Hotline at 800–296–1996.

Conclusion

EPA believes that the above-described program is the best, most cost-effective way to achieve immediate environmental improvement and achieve significant progress in resolving the myriad compliance concerns that may be present in this industry. Its terms, conditions and protections will be available only to those companies that are eligible, elect to participate, and abide by the conditions of the program.

Dated: January 30, 2002.

Eric Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

Attachments

Partnership Agreement with Annexes: Sample Identification of Facilities due April 26, 2002; Sample AOC; Sample CAFO.

Ozone-Depleting Substance Emission Reduction Bakery Partnership Agreement

The United States Environmental Protection Agency (''EPA'') and _____ (''Participating Company''), the parties to this agreement, desire to enter into and be bound by the terms of this Ozone-Depleting Substance (ODS) Emission Reduction Bakery Partnership Agreement (''Agreement'').

Introduction

The Agreement specifies an audit, self-disclosure and corrective action program, which shall result in a release from liability for the conditions that are identified and corrected. This Agreement incorporates the features of the Bakery Partnership Program as detailed in the **Federal Register** notice on this topic, published February 6, 2002.

Applicability

1. This Partnership Agreement shall apply to and be binding upon both EPA and Participating Company, including but not limited to its officers, directors, agents, servants, employees, successors, and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any machinery subject to Title VI, Clean Air Act (42 U.S.C. 7671 et. seq.) (the ''Act'') and its incorporating regulations, 40 CFR Part 82 (''Regulations''). EPA, in cooperation with baking industry trade officials and trade journals, notified the baking industry of this program.

2. In order for a Participating Company to be eligible to participate in this Agreement, the Participating Company must be a wholesale bakery not currently under corporate-wide investigation by EPA for a violation of Title VI of the Clean Air Act.

Definitions

3. ''Participating Company'' means any eligible company and its wholly- or partially-owned subsidiaries, including all their bakeries, that agree to abide by the conditions of this Agreement.

4. ''Corporate-wide investigation'' means an investigation that requires information disclosure from either (1) five or more facilities owned by a company that seeks to be a Participating Company or (2) all facilities that are subject to Title VI and owned by a company that seeks to be a Participating Company.

5. ''Non-ODS system'' means pollution prevention technology recommended to and agreed upon by EPA that supplants standard ODS technology, including but not limited to glycol, chilled water, or other non-ODS coolant in a secondary loop system or totally non-ODS systems, such as HFCs or ammonia.

6. ''Facility'' means a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's baking/bakery business, containing at least one appliance.

7. ''Retrofit'' means to install new or modified parts in an appliance that were not provided as a part of the originally manufactured equipment. The retrofitted appliance must use a refrigerant with an ozone depleting potential that is lower than that which was used before the retrofit.

8. ''Retire'' means to withdraw an appliance from service and replace it with an appliance containing a refrigerant with an ozone depleting potential that is lower than that which was used in the retired appliance.

9. ''Appliance'' means an industrial process refrigeration appliance containing 50 pounds of more of ODS refrigerant that is housed within the facility.

10. ''ODS'' means Ozone Depleting Substance used as a refrigerant.

Initial Notice and Submission of Partnership Agreement

11. Participating Company represents that:

a. It notified EPA of Participating Company's intent to participate in the Ozone Depleting Substance Emission Reduction Bakery Partnership Program by 5:00 PM Eastern Time, April 26, 2002, by identifying the facilities owned by the Participating Company.

b. It submitted this executed Partnership Agreement by April 30, 2002. Annex A, submitted with this Agreement, or updated shortly thereafter, is a true, accurate, and complete identification of:

i. Name of the Participating Company; and

ii. Name, street address, ZIP code, and city of each facility at which the Participating Company believes any subject appliance is presently located; and

iii. State in which the facility is located; and

iv. EPA region in which the facility is located; and

v. The number or best estimate of the number of appliances with more than 50 pounds of refrigerant when fully charged, as determined by calculation, weight, manufacturer supplied information, or an established range as described in 40 CFR 82.152; and

vi. The number or best estimate of the number of non-ODS industrial process refrigeration appliances.

c. Participating Company certifies that it is eligible to be a participating company, that is, it meets the qualifications specified in paragraphs 2 and 3.

d. Participating Company agrees to audit all its facilities as specified below and disclose the summary results of such audits to EPA and correct any and all violations in accordance with this Agreement.

e. Participating Company agrees to toll the applicable statute of limitations during the life of the Agreement as it may apply to the violations that may have occurred within the time period five years prior to the signing of this Agreement.

f. In the event that ownership of a facility subject to this Agreement is (or was) transferred during the period covered by the Agreement, the Agreement shall apply to the former owner for the period during which the facility was owned by the former owner, provided all applicable terms and conditions are otherwise satisfied. The Agreement shall also apply prospectively, according to its terms, to the party to whom the facility is transferred.

Audit Conduct, Report and Plans

12. Participating Company agrees to assist EPA with EPA's review of company's audit results. Such assistance may take the form of responding to telephone calls for clarification and other reasonable informal inquiries, without the need for formal information demands.

13. Participating Company agrees to identify all facilities with applicable industrial process refrigeration appliances.

14. Participating Company agrees to undertake a reasonable investigation, and to

the extent it can reasonably assemble such information, report to EPA for each applicable appliance, dates of service, beginning September 30, 2000 and continuing until June 15, 2003; pounds of refrigerant added; days since the last addition of refrigerant; percent annualized leak rate; and any associated comments by using a spreadsheet such as the one contained in Annex C. To the extent that a change in system components, such as a new compressor, may have altered the full charge, or where other special conditions arise, these conditions should be noted in the comments section.

15. Participating Company agrees to complete audits of all industrial process refrigeration appliances at each facility, except for those appliances converted to a non-ODS system prior to April 26, 2002, and notify EPA with a summary of the audit results as specified in the preceding paragraph and corrective actions planned, as necessary, by July 15, 2002 for Class I appliances and by July 15, 2003 for Class II appliances. Participating Company may, at its sole discretion, include commercial and comfort cooling appliances subject to 40 CFR 82.156(i) in the audit for compliance and receive a release from liability for problems identified and corrected.

16. Participating Company agrees to calculate the total per appliance and per pound penalties, if any, due and owing by July 15, 2003 in accordance with the method outlined in the **Federal Register** final announcement of the Bakery Partnership Program, and to submit this calculation to EPA.

17. Participating Company agrees to provide, in writing, by July 15, 2003, the steps that Participating Company will take to achieve continuous compliance with the requirements of 40 CFR Part 82. Such measures may include, but are not limited to, such things as training, record keeping, replacement, repair, installation of non-ODS systems. See Annex E for additional, required Compliance Plan elements. Participating Company agrees to implement this Plan.

Audit Compliance Program

18. For all Class I appliances Participating Company will complete an audit and submit plans for the retrofit of these appliances with an ODS having an ozone depleting potential of 0.1 or less or retirement/replacement with a non-ODS system. Plans for these Class I appliances must be submitted by July 15, 2002, with a schedule for the completion of these activities within one year, unless additional time is allowed pursuant to 40 CFR 82.156(i)(7). These plans will be incorporated in an Administrative Order on Consent [AOC]. See Annex B.

19. For Class II appliances, Participating Company will sign an Administrative Order on Consent agreeing to develop, within the next twelve months, plans, where needed, for the replacement of these Class II appliances with non-ODS systems.

20. If any appliance within a facility owned by Participating Company contains a refrigerant that is not an EPA-approved refrigerant for that particular end-use (such as R–409A use in an industrial process refrigeration appliance) or is not in compliance with use restrictions of an approved refrigerant, Participating Company must take immediate steps to properly recover said refrigerant from the appliance (in accordance with the Regulations) and replace it with an approved refrigerant, in accordance with any use restrictions. Recovered refrigerant must be sent to an EPA-certified refrigerant reclaimer for ultimate reclamation or disposal.

Certification of Complete Compliance

21. Participating Company shall sign and submit to EPA a Certification of Complete Compliance (Annex D) when all plans, retrofits and other steps necessary to ensure continuous compliance have been finalized.

Employee Participation

22. Participating Company shall provide a procedure for its employees to report violations or potential problems to the auditing team. Participating Company agrees to ensure that employees who disclose violations or potential violations to the auditing team under the Act and the Regulations are not subject to adverse job actions (including without limitation disciplinary action, denial of promotion, bonuses or pay) on the basis of such employee disclosing such violations or potential violations in accordance with company policies.

Participating Company Records Retention

23. Participating Company agrees to keep and retain on site or readily available any and all records from April 26, 1999 until two years after the conclusion of all obligations under this Agreement. Records for appliances that have been converted to non-ODS systems need not be retained for more than three years prior to the completion of the conversion to the non-ODS system. Such records shall be kept by both Participating Company and its employees, agents and any contractors working for Participating Company. All records are required to be retained for this period of time to facilitate review by EPA, should EPA choose to conduct such a review. Participating Company agrees to notify all employees, agents and contractors that any such record is not to be destroyed.

Penalties

24. A ''per applicance'' penalty of $10,000, with a cap of $50,000 per facility, shall be due and owing for each industrial process refrigeration appliance that does not qualify as a non-ODS system by April 26, 2002. A ''per pound'' penalty, as specified in the above-referenced Federal Register notice, shall be calculated for each appliance, unless equipment conversions to non-ODS systems eliminate this penalty.

25. The total penalty shall be paid within 30 days of receipt of the signed CAFO which should be shortly after July 2003.

Forbearance

26. EPA agrees to forbear on Part 82 civil enforcement activity against Participating Company during the course of this Agreement, provided that Participating Company is in compliance with this Agreement. EPA may, however, inspect and request information to ensure that the audits are being conducted fully and properly. EPA does not forbear or relinquish any right to access and inspection under this agreement.

27. Participating Company understands that any violations discovered by EPA subsequent to the completion of the audit or compliance efforts and/or the expiration of this Agreement are subject to standard regulatory enforcement. That is, nothing in this Agreement, other than the release from civil liability for problems/violations disclosed and corrected, is to the derogation of EPA's full enforcement and compliance authority at the conclusion of the Partnership.

28. If EPA believes that the Participating Company has miscategorized or mischaracterized any problem/violation under this Agreement, the Dispute Resolution section of this Agreement shall be utilized.

Release From Liability/CAFO

29. Participating Company understands and acknowledges that participation in the Program will not absolve Participating Company or its employees from any criminal liability. In considering whether to refer a matter for criminal prosecution, EPA will be guided by its Self-Audit Policy. In general, it is EPA's policy to refer matters for criminal prosecution only in cases involving a high degree of harm and/or misconduct.

30. EPA agrees to execute an administrative Consent Agreement Final Order conditionally releasing Participating Company from civil liability for any and all violations or potential violations that have been self-disclosed and corrected, on condition that Participating Company pays penalties that may be due and completes the plans with compliance schedules that have been submitted and agreed upon by the Participating Company and the EPA. A complete release from civil liability will be granted for any appliance that is converted to a non-ODS system. Good faith participants in this Partnership Program will receive a civil release for the period of time prior to September 30, 2000, even though this period may not be audited.

31. EPA and Participating Company will execute an Administrative Compliance Order on Consent and CAFO confirming the plans and penalties agreed upon by the parties.

Publicity

32. Participating Company may publicize that it is partnering with the EPA in an effort to reduce ODS emissions.

33. Upon request by the Participating Company, EPA will recognize and acknowledge Participating Company's participation and assistance under the Program.

Access and Inspection

34. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials at any of Participating Company's facilities, may enter such location(s) at reasonable times to determine compliance with this Agreement. Access under this clause is subject to the normal health and safety and

confidentiality requirements in effect at such facilities.

Dispute Resolution

35. Should the need arise, Participating Company agrees to first engage in informal dispute resolution with EPA's Air Enforcement Division/Regional staff concerning any determination made by EPA in its review of the program. Such informal dispute resolution will consist of negotiations between Participating Company and the designated attorney(s) and/or Division Director of the Air Enforcement Division at the address in paragraph 42. To exercise informal dispute resolution, Participating Company shall send a written notice to EPA outlining the nature of the dispute or disagreement and request informal negotiations to resolve the dispute. EPA will respond to such requests within 15 days. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when EPA responds, unless the parties agree otherwise in writing. Both parties will attempt to achieve a solution acceptable to all.

36. Should the Participating Company be dissatisfied with the results of the informal dispute resolution, the Participating Company may request that the dispute be negotiated with the assistance of a non-binding mediator, by notifying in writing the Director of the Air Enforcement Division and other members of the informal negotiations team. EPA will respond to such requests within 15 days. The costs of such mediation will be shared equally by the Participating Company and EPA. EPA may reject the request for mediation if costs are deemed unreasonable. A convenor will assist in the selection of a mutually acceptable neutral mediator. Mediation shall not extend beyond thirty (30) days from the date when the mediator first meets with the parties, unless the parties agree otherwise in writing.

37. It is anticipated that any disputes will be resolved by the process of negotiation outlined above. Participating Company agrees that resolution within EPA is the sole and final dispute resolution mechanism.

Effective Date

38. This Agreement shall become effective upon the date signed by the parties to this agreement (below).

Miscellaneous

39. Nothing in this Agreement will relieve the Participating Company of its obligation to comply with any other Clean Air Act provision, other environmental law, or applicable environmental regulations, either state or Federal.

40. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to this Agreement at the address listed below (if different from the one listed in Annex A).

_____

_____

_____

_____

41. EPA agrees to accept service from Participating Company by mail with respect to all matters relating to this Agreement at the address listed below.

Electronically preferred: *docket.oeca@epa.gov* or Title VI Coordinator, Attention: Charlie Garlow, US EPA Air Enforcement Division, 1200 Pennsylvania Ave NW., Mail Code 2242A, Washington, DC 20460 202–564–1088.

Integration

42. This Agreement, and the Annexes and **Federal Register** notice incorporated by reference in this Agreement, represents the final form of the contract between EPA and Participating Company. No oral modifications to the Agreement will be binding upon either party.

Signatures

43. EPA and the Participating Company represent that they have examined this Agreement and the attached and incorporated Annexes and **Federal Register** notice and agree to the terms by signing and dating below.

44. Each person signing this Agreement represents that he or she is authorized to legally bind the party on whose behalf he or she is signing.

45. Agreed To:

By: _____

[Participating Company]

Date: _____

By: _____

US Environmental Protection Agency

Date: _____

Annex A Sample Identification of All Facilities Owned by Participating Company

Note: EPA's Regions are shown on a map at http://www.epa.gov/epahome/aboutepa.htm.

Participating company/facility name	Location, mailing address, city, zip	State	Region	No. of ODS-containing and non-ODS appliances, if known
Marvy Bread/Plant 4	123 Main St, Lodi 94588	CA	9	15 ODS, 5 non-ODS.

Annex B Sample Administrative Order on Consent

United States Environmental Protection Agency

In the Matter of: [Participating Company] Respondent. Bakery Partnership Program, Agreement Number_____, Findings and Order

Pursuant to Sections 113(a)(3) and 114 of the Clean Air Act (''CAA''), consistent with the Bakery Partnership Program identified above and entered into between the United States Environmental Protection Agency (''EPA'') and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order, with the expressed consent of Respondent:

Findings

1. Respondent is a Participating Company under the above-identified Bakery Partnership Program.

2. EPA promulgated regulations for the control of Ozone Depleting Substances, appearing in 40 CFR Part 82, Subpart F.

3. Respondent owns or operates certain affected equipment under Part 82 that contains or contained Ozone Depleting Substances, at facilities identified in Attachment A attached hereto.

Order

4. Respondent shall retrofit or replace the referenced equipment as specified in Attachment A by the date(s) there indicated. Where additional time may be required to complete these actions, application to EPA shall be timely made pursuant to 40 CFR 82.156(i)(7).

5. Within 12 months of this Order, Respondent shall prepare and submit to EPA plans for the conversion of Class II appliances to non-ODS systems, for the appliances identified in Attachment B, attached hereto.

6. Consistent with the Bakery Partnership Agreement entered into between EPA and [the Participating Company], per appliance and per pound penalties shall be calculated and submitted to EPA by July 15, 2003.

7. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for penalties.

Issued this _____ day of _____, 2003

_____

U.S. Environmental Protection Agency

8. [Participating Company] consents to the issuance of this Order and further agrees not to contest EPA's authority to issue this Order.

Signed this _____ day of _____, 2003

_____

For [Participating Company]

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Beanie Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Annex D Certification of Completion and Compliance

I certify, based on personal inspection, that correction of the violations/problems identified as a part of the Bakery Partnership Agreement with the United States Environmental Protection Agency, dated_____is complete.

I certify that _____, Participating Company, has corrected all violations, and training, recordkeeping, equipment replacement, and all other necessary and prudent measures have been taken to ensure complete compliance with Title VI, Clean Air Act (42 U.S.C. 7671 *et seq*.).

I certify that the following summary of the actions taken are true and complete:

_____

_____

_____

I certify that I am an officer of _____, Participating Company, and am duly authorized to sign and complete this Certification of Compliance on behalf of Participating Company.

_____

Name (print)

_____

Signature

_____

Date

Annex E Compliance Plan Required Elements—For Appliances Containing Greater Than 50 Pounds of a Class I or Class II Substance

A. Each Participating Company will have at least one employee in each facility responsible for ensuring compliance with the refrigerant Compliance Plan.

B. Only technicians certified in accordance with 40 CFR Part 82 will perform refrigerant-related service on refrigerant containing appliances.

C. Technicians will have available for use and use, as required, recycle/recovery equipment certified pursuant to 40 CFR 82.156.

D. Repairs to refrigerant-leaking appliances will be conducted within the time frames outline in 40 CFR 82.156.

E. Initial verification tests on industrial process equipment will be conducted following any refrigerant-related repairs.

F. Follow-up verification tests on industrial process equipment will be conducted within thirty days of any refrigerant-related repairs.

G. Leak rates will be calculated (a) when refrigerant is added to appliances containing greater than 50 pounds of a Class I or Class II substance and (b) when the follow-up verification test reveals an unsuccessful repair.

H. Procedures documenting what additional action will be taken as a result of a failed repair will be written.

I. Each Participating Company will maintain the following records in a single location at each facility:

1. An inventory of appliances containing greater than 50 pounds of a Class I or Class II substance and their refrigerant capacities.

2. A unique identification for each appliance containing greater than 50 pounds of a Class I or Class II substance.

3. Date the refrigerant-related service is performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

4. Type of refrigerant-related service performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

5. Amount and type of refrigerant added to each appliance containing greater than 50 pounds of a Class I or Class II substance.

6. Name of the technician performing work on each appliance containing greater than 50 pounds of a Class I or Class II substance.

7. A copy of the technician certification card for all technicians performing work.

8. Refrigerant purchase records.

9. A copy of the recycle/recovery equipment owner's certification.

J. Each participant will provide refresher training on the refrigerant compliance program annually for facility personnel responsible for oversight of maintenance and service of refrigerant-containing appliances.

Sample CAFO

United States Environmental Protection Agency, Washington, DC

In the Matter of: [Participating Company] Respondent. Docket No. CAA–HQ–2003–XXX, Consent Agreement and Final Order

I. Preliminary Statement

1. The United States Environmental Protection Agency (''EPA'') and [Participating Company] have entered into a voluntary Bakery Partnership Agreement, pursuant to which an audit of compliance status and self-correction program has been undertaken. It was further agreed by the parties that certain civil penalties would be paid pursuant to the administrative authority of Section 113(d) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(d).

2. This Consent Agreement and Final Order [CAFO] is issued pursuant to the authority of 40 CFR 22.13(b), 22.18(b)(2) and (3), which pertain to the quick resolution and settlement of matters without the filing of a complaint.

3. This Consent Agreement and Final Order resolves the liability for violations that may have been discovered pursuant to an audit of the Respondent's facilities regarding compliance with Title VI of the Clean Air Act, Stratospheric Ozone Protection, and more particularly 40 CFR Part 82, Subpart F, relating to recycling and emissions reductions from appliances containing ozone depleting substances.

II. Consent Agreement

4. As a result of the voluntary audit conducted pursuant to the Bakery Partnership Agreement, EPA and Respondent have agreed to resolve this matter by executing this Consent Agreement.

5. For the purpose of this proceeding, Respondent does not contest the jurisdiction of this tribunal, consents to the assessment of a civil penalty as specified below, and consents to implement the corrective action Plans and Other Conditions, attached hereto.

6. The execution of this Consent Agreement is not an admission of liability by Respondent, and Respondent neither admits nor denies any specific factual allegations contained herein. EPA alleges that one or more of the conditions contained in the attached Summary of Audit Findings constitutes a violation of 40 CFR part 82.

7. As a complete settlement for all conditions specified in the attached Summary of Audit Findings, Respondent hereby agrees to pay to the United States a civil penalty as specified in the attached Penalty Calculation. EPA agrees to conditionally release Respondent from civil liability for the conditions, and only those conditions, identified in the attached Summary of Audit Findings, except for those appliances that are identified as having been or being converted to non-ozone depleting substances, for which a complete release of civil liability is granted. This release is conditioned upon the satisfactory completion of the Plans and Other Conditions attached hereto, and the timely payment of the civil penalty. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not be audited. The parties agree that the attached Summary of Audit Findings, Penalty Calculation and Plans and Other Conditions are incorporated herein by reference and made a part of this CAFO.

8. Respondent waives its right to request an adjudicatory hearing on any issue addressed in this Consent Agreement.

9. Respondent and EPA represent that they are duly authorized to execute this Consent Agreement and that the parties signing this Agreement on their behalf are duly authorized to bind Respondent and EPA to the terms of this Consent Agreement.

10. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

11. Respondent and EPA stipulate to issuance of the proposed Final Order below.

[Participating Company], Respondent

By _____

(Print name) _____

Title: _____

Dated: _____

U.S. Environmental Protection Agency, Complainant

By _____

Dated: _____

Headquarters EPA

III. Final Order

It is hereby ordered and *adjudged* as follows:

12. Respondent shall comply with all terms of the Consent Agreement.

13. For the reasons set forth above, Respondent is hereby assessed a penalty in the amount of $_____.

14. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the date a conformed copy of this Consent Agreement and Final Order (''CAFO'') is received by Respondent.

15. All payments under this CAFO shall be made by certified check or money order, payable to the United States Treasurer, mailed to: U.S. Environmental Protection Agency, (Washington D.C. Hearing Clerk), P.O. Box 360277, Pittsburgh, Pennsylvania 15251–6277.

A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall file a copy of the check and of the transmittal letter with the Headquarters Hearing Clerk.

16. Failure to pay the penalty assessed under this CAFO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, enforcement expenses, including attorneys fees, and nonpayment penalties. In any such collection action, the validity, amount, and appropriateness of this order or the penalty assessed hereunder are not subject to review.

17. Pursuant to 42 U.S.C. 7413(d)(5) and 31 U.S.C. 3717, Respondent shall pay the following amounts:

a. *Interest.* Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. 6621(a)(2) from the date a conformed copy of this CAFO is received by Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a copy of this CAFO is received by Respondent.

b. *Attorney Fees, Collection Costs, Nonpayment Penalty.* Pursuant to 42 U.S.C. 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the assessed penalty, Respondent shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

18. This document constitutes an ''enforcement response'' as that term is used in the CAA Penalty Policy for the purposes of determining Respondent's ''full compliance history'' as provided in Section 113(e) of the CAA, 42 U.S.C. 7413(e).

19. Each party shall bear its own costs, fees, and disbursements in this action.

20. The provisions of this CAFO shall be binding on Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

It is so ordered.

Dated this _____ day of _____, 1999.

_____

Environmental Appeals Judge
Environmental Appeals Board
U.S. Environmental Protection Agency

Certificate of Service

I certify that the forgoing Consent Agreement and Final Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Eurika Durr, EAB Hearing Clerk, U.S. Environmental Protection Agency, Mail Code 1103B, 607 14th Street NW Suite 500, Washington, D.C. 20005.

Copy by certified mail, return receipt requested:

_____, Registered Agent for
[Participating Company]
[Participating Company's address]

Dated: _____

_____

U.S. EPA

Sample Summary of Findings

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Marvy Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Technician Certifications for two technicians, Joe Jones and Sam Spade, at Plant 4 were missing. Those certifications are now on file.

Service records before September 30, 2000 were missing.

Sample Penalty Calculation

Marvy Bread Plant 4 The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

Per pound penalty: $6,200—waived as this machine is being converted to non-ODS.

Per appliance penalty: 10,000.

Total Penalty: $10,000.

Sample Plans and Other Conditions

Beanie Bread agrees to convert the Bun Mixer at Plant 4, Serial Number 45678, to a non-ODS system.

Completion date: July 30, 2004.

Beanie Bread agrees to develop a computer based recordkeeping program to ensure that complete and accurate records are retained as required.

Completion date: September 30, 2003.

[FR Doc. 02–2837 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P