

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.) Civil Action No.
)
 BRADFORD INDUSTRIES, INC.)
)
 Defendant.)

CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 3

II. APPLICABILITY 4

III. DEFINITIONS 5

IV. CIVIL PENALTY 6

V. COMPLIANCE REQUIREMENTS 8

VI. REPORTING REQUIREMENTS 10

VII. STIPULATED PENALTIES 11

VIII. FORCE MAJEURE 14

IX. DISPUTE RESOLUTION 16

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 19

XI. NOTICES 21

XII. COSTS 22

XIII. MODIFICATION 23

XIV. INTEGRATION 23

XV. SIGNATORIES/SERVICE 24

XVI. PUBLIC PARTICIPATION 24

XVII. EFFECTIVE AND TERMINATION DATES 25

XVIII. RETENTION OF JURISDICTION 26

XIX. FINAL JUDGMENT 27

APPENDIX I 31

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed contemporaneously with the lodging of this Consent Decree a Complaint in this action (“Complaint”) against Defendant, Bradford Industries, Inc. (“Bradford”), alleging that Bradford has committed violations of regulations and permits issued pursuant to the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and violations of regulations issued pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992k, at Bradford’s manufacturing facility located at 75 Rogers Street, in Lowell, Massachusetts (the “Facility”);

WHEREAS, the United States and Bradford (“the Parties”), without the necessity of trial regarding any issue of fact or law, and without any admission of liability by Bradford, consent to entry of this Consent Decree;

WHEREAS, the Parties agree, and the Court finds, that settlement of this action without adjudication or admission of facts or law is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the claims alleged in the Complaint;

THEREFORE, it is adjudged, ordered and decreed as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to Section 113(b) of the CAA, 42 U.S.C.

§ 7413(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and 28 U.S.C. §§ 1331, 1345 and 1355.

2. Venue properly lies in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. § 1395(a), because Bradford resides and is located in the district, and because the violations alleged in the Complaint occurred there. For purposes of this Consent Decree, or any action to enforce this Decree, Bradford consents to the Court's jurisdiction over this Decree and over Bradford and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Bradford agrees that the Complaint states claims upon which relief can be granted against Bradford pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and Section 3008 of RCRA, 42 U.S.C. § 6928.

4. The United States has notified the Commonwealth of Massachusetts of the commencement of this action, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) .

II. APPLICABILITY

5. The provisions of this Consent Decree shall apply to and be binding upon the United States on behalf of the EPA, and upon Bradford and any successors, assigns, or other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of any of Bradford's facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Bradford of its obligation to ensure that the terms of the Decree are implemented. At

least thirty (30) days prior to such transfer, Bradford 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 the United States in accordance with Section XI below. Any transfer of ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

7. Bradford shall provide a true copy of this Consent Decree to all of its officers, managers, supervisors, and agents whose duties might reasonably include compliance with any provision of this Decree. Bradford shall also provide a copy of the Decree to any contractor retained to perform work required under this Consent Decree, and shall condition any such contract upon performance of the work in conformity with the terms of the Decree.

8. 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, except to the extent that any such failure has been made the subject of a force majeure claim in accordance with the terms of Section VIII below.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CAA and RCRA, or in regulations promulgated to the CAA or RCRA, shall have the meanings assigned to them in the CAA or RCRA, or in such regulations, unless otherwise provided in this

Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- (a) “Consent Decree” or “Decree” shall mean this document and all attachments and appendices hereto;
- (b) “Day” shall mean a calendar day, unless otherwise specified;
- (c) “Parties” shall mean the United States on behalf of EPA, and Bradford;
- (d) “Provide written notice” shall mean, unless otherwise specified, that information and documents shall be transmitted in accordance with the procedures specified in Section XI;
- (e) “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;
- (f) “Section” shall mean a portion of this Consent Decree identified by a Roman numeral;
- (g) “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies; and
- (h) “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Bradford shall pay to the United States a civil penalty of \$75,000, plus applicable interest, in three installment payments as follows: by no later than thirty (30) days after the date of entry of this Consent Decree (“Entry Date”), Bradford shall pay

\$25,000; by no later than one year after the Entry Date, Bradford shall pay \$25,000 plus applicable interest; and by no later than two years after the Entry Date, Bradford shall pay \$25,000 plus applicable interest. Interest on the final two installment payments shall be at the rate specified in 28 U.S.C. § 1961, and shall be calculated on the entire declining balance starting from the Entry Date.

11. Bradford shall make the above-described civil penalty payments by FedWire Electronic Funds Transfer (“EFT”) in accordance with written instructions to be provided to Defendant by the U.S. Department of Justice or the U.S. Attorneys Office for the District of Massachusetts. At the time of each payment, Bradford shall provide written notice of the payment via facsimile and mail to the United States in accordance with Section XI below. The notice shall contain a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter that references the case’s civil docket number and DOJ case number # 90-5-2-1-09314, states that the payment is for the case’s civil penalty, and explains the calculation of any interest included in the payment. Bradford shall also provide this same written notice by e-mail to acctsreceivable.CINWD@epa.gov, and by mail to the U.S. Environmental Protection Agency, Fine and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO, 63197-9000.

12. If Bradford fails to make any penalty payment in full by its due date, the due dates of all remaining scheduled penalty payments under this Consent Decree shall be accelerated to the due date of the missed payment date, and Bradford shall pay quarterly

nonpayment penalties, and any governmental enforcement expenses incurred to collect the late payment, in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). Bradford shall also be liable for stipulated penalties in accordance with Section VII below.

13. Bradford certifies that it shall not use any payments made pursuant to this Section, and any payments made pursuant to Section VII, in any way as, or in furtherance of, a tax deduction for Bradford, or any of its corporate affiliates, under federal, state or local law. Solely as to the United States, and solely for the purpose of ensuring the accuracy of this certification, Bradford specifically waives any confidentiality rights it has with respect to its federal tax returns and return information under 26 U.S.C. § 6103, and on any state or local tax returns.

V. COMPLIANCE REQUIREMENTS

14. Bradford shall comply at all times with the CAA and RCRA, and with all permits and regulations issued pursuant to these statutes.

15. By no later than ten (10) days after the Entry Date, Bradford shall commence performing the two environmental compliance audits required by the attached Appendix I, which is incorporated by reference into this Consent Decree.

16. By no later than ten (10) days after the Entry Date, Bradford shall create a full-time environmental manager position for the company, and shall staff this position with an existing or newly-hired employee. The business responsibilities of this employee

("Environmental Manager") shall be solely related to environmental management and compliance. This position shall be permanent part of Bradford's management structure.

17. By no later than ten (10) days after the Entry Date, Bradford shall create a full-time environmental technician position, and shall staff this position with an existing or newly-hired employee ("Environmental Technician"). The Environmental Technician shall report to and assist the Environmental Manager with environmental compliance-related training, tracking, recordkeeping and reporting for the Facility, and shall supply other environmentally-related assistance and support as required by the Environmental Manager or other senior Bradford management personnel. This position shall be staffed for a minimum of three (3) years from the Entry Date, unless Bradford and EPA agree in writing that a shorter period is warranted.

18. By no later than the Entry Date, Bradford shall institute new management procedures requiring direct reporting to Bradford's Vice President of any environmental regulatory issues relating to compliance, which shall be promptly addressed and resolved as directed by the Vice President in consultation with the Environmental Manager.

19. By no later than the Entry Date, Bradford shall revise and expand its environmental review process for existing product changes and new products to include the specific approval by Bradford's Vice President for all such changes and products.

20. Notwithstanding any other provisions in this Consent Decree, if Bradford for any reason suspends all of its manufacturing operations at the Facility, Bradford may simultaneously suspend the performance of the environmental management measures

required by Paragraphs 16 through 19 of this Section, the environmental audits required by Appendix I, and the reporting requirements set out in Section VI and Appendix I, provided that Bradford provides written notice of the manufacturing operation suspension to EPA within ten (10) calendar days. If Bradford should subsequently recommence any of its manufacturing operations, Bradford shall simultaneously recommence the performance of the above-described environmental management measures, auditing and reporting requirements, and provide written notice thereof to EPA within ten (10) calendar days.

VI. REPORTING REQUIREMENTS

21. Each calendar quarter, Bradford shall provide to EPA Region 1 a progress report regarding the performance of the environmental compliance audits required by Appendix I, containing all information and documentation required therein. The reports shall be due within (ten) 10 days after the end of each calendar quarter, that is, by January 10th, April 10th, July 10th and October 10th. Bradford shall provide its first progress report for the calendar quarter ending in September 2009, unless Bradford and EPA Region 1 agree in writing to alter this date. Bradford shall continue to provide progress reports until the requirement is suspended or discontinued as specified in this Consent Decree. Bradford's first progress report shall contain, in addition to all required information regarding the audits, a detailed description of Bradford's implementation of the environmental management measures required by Paragraphs 16 through 19 above.

22. The reporting requirements of this Section do not relieve Bradford of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

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

VII. STIPULATED PENALTIES

24. Except as otherwise provided in this Consent Decree, Bradford shall be liable for stipulated penalties as set forth below in this Section.

25. Late Payment of Civil Penalty: If Bradford fails to timely pay any amount of the civil penalty set out in Section IV, Bradford shall be liable for the unpaid amount and for any interest or other charges as provided in Section IV, and for stipulated penalties as follows:

| <u>Days of Failure to Pay</u> | <u>Penalty Per Day</u> |
|-------------------------------|------------------------|
| 1 to 30 days | \$ 500 |
| 31 to 60 days | \$ 750 |
| 61 days and beyond | \$ 1,000 |

26. Failure to Perform Environmental Audit Requirements: If Bradford fails to perform any of the requirements set out in Appendix I relating to the performance of the environmental compliance audits, Bradford shall be liable for stipulated penalties for each violation of each such requirement, as follows:

| <u>Days of Failure to Perform</u> | <u>Penalty Per Day</u> |
|-----------------------------------|------------------------|
| 1 to 30 days | \$ 500 |
| 31 to 60 days | \$ 1,000 |
| 61 days and beyond | \$ 2,500 |

27. Failure to Implement Environmental Management Measures: If Bradford fails to perform any of the requirements set out in Paragraphs 16 through 19 above relating to the implementation of environmental management measures, Bradford shall be liable for stipulated penalties for each violation of each such requirement, as follows:

| <u>Days of Failure to Perform</u> | <u>Penalty Per Day</u> |
|-----------------------------------|------------------------|
| 1 to 30 days | \$ 500 |
| 31 to 60 days | \$ 1,000 |
| 61 days and beyond | \$ 2,500 |

28. Failure to Provide Information: If Bradford fails to timely provide any information required pursuant to Section VI, Bradford shall be liable for stipulated penalties for each such failure to provide information, as follows:

| <u>Days of Failure to Provide Information</u> | <u>Penalty Per Day</u> |
|---|------------------------|
| 1 to 30 days | \$ 250 |
| 31 to 60 days | \$ 500 |
| 61 days and beyond | \$ 1,000 |

29. Stipulated penalties arising under this Section shall begin to accrue on the day that the violation of this Consent Decree first occurs, and shall continue to accrue for each day until the day upon which the violation is fully corrected. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Bradford that a violation of this Consent Decree has occurred.

30. Stipulated penalties shall become due and owing, and shall be paid by Bradford, not later than thirty (30) days after the United States issues Bradford a written demand for them, specifying the particular violations of the Consent Decree for which the penalties are demanded. If any demanded stipulated penalties are not paid in full when due, Bradford shall pay the unpaid penalties and interest thereon. Such interest shall accrue from the date the penalties were due, and shall be calculated in accordance with 28 U.S.C. § 1961.

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

32. Bradford shall pay stipulated penalties owing to the United States in the manner set forth, and with the written notices required, by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall specify the violation(s) for which the penalties are being paid.

33. Stipulated penalties shall continue to accrue as provided in Paragraph 29 above during any dispute resolution for stipulated penalties, with interest on accrued penalties payable and calculated in accordance with 28 U.S.C. § 1961, 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, Bradford shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision;

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, Bradford shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph (c), below;

(c) If any party appeals the Court's decision, Bradford shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

34. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States pursuant to Section X below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of any violation by Bradford of this Consent Decree or of the statutes, regulations or permits referenced within it.

VIII. FORCE MAJEURE

35. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of Bradford, or any entity controlled by Bradford, or of Bradford's contractors, that delays or prevents the performance of any obligation of this Consent Decree subject to stipulated penalties despite Bradford's best efforts to perform the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring; and (b) after it has occurred, such that the nonperformance is minimized to the

greatest extent possible. Force majeure does not include Bradford's financial inability to perform the obligations of this Consent Decree. Stipulated penalties shall not be due for the number of days of nonperformance caused by a force majeure event as defined in this Paragraph, provided that Bradford complies with the terms of this Section.

36. If any event occurs which causes or may cause nonperformance of any obligation of this Consent Decree subject to stipulated penalties, whether or not caused by a force majeure event, Bradford shall provide written notice to EPA as soon as possible, but not later than seven (7) days after the time Bradford first knew of the event, or by the exercise of due diligence should have known of the event. The notice shall describe the noncompliance or expected nonperformance, including its causes and expected duration; describe the measures taken and to be taken by Bradford to prevent or minimize the nonperformance or expected nonperformance; provide a schedule for carrying out those actions; and state Bradford's rationale for attributing any nonperformance or expected nonperformance to a force majeure event. Failure to provide timely and complete notice in accordance with this Paragraph shall preclude Bradford from asserting any claim of force majeure with respect to the event in question.

37. If EPA agrees that nonperformance or potential nonperformance of an obligation of this Consent Decree is attributable to force majeure, EPA will notify Bradford of its agreement and the length of the extension granted to perform the obligation. Stipulated penalties shall not accrue with respect to such obligation during the extension provided by EPA for performance. An extension of time to perform the

obligation affected by a force majeure event shall not, by itself, extend the time to perform any other obligation under this Consent Decree.

38. If EPA does not agree that a force majeure event has occurred or does not agree to the extension of time sought by Bradford, EPA will notify Bradford in writing of EPA's position, which shall be binding unless Bradford invokes dispute resolution under Section IX below no later than fifteen (15) days after receipt of EPA's written notice. In any such dispute, Bradford shall bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event as defined by this Section; that Bradford provided the written notice required by Paragraph 36; that the force majeure event caused any nonperformance Bradford claims was attributable to that event; and that Bradford exercised its best efforts to prevent or minimize any nonperformance caused by the event.

IX. DISPUTE RESOLUTION

39. Unless otherwise provided 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. However, such procedures shall not apply to actions by the United States to enforce obligations of Bradford that have not been disputed in accordance with this Section.

40. 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 Bradford provides written notice to EPA

describing the nature of the dispute and requesting informal negotiations to resolve it. The period of informal negotiations shall not exceed twenty (20) days beyond the date that EPA receives Bradford's written notice unless EPA and Bradford agree in writing to a longer period. If the parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Bradford invokes formal dispute resolution procedures as set forth below.

41. Formal Dispute Resolution: Bradford shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by providing written notice to the United States containing a statement of position regarding the matter in dispute. The statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Bradford's position and any supporting documentation relied upon by Bradford.

42. The United States shall provide written notice containing its own statement of position to Bradford within forty-five (45) days of receipt of Bradford's statement of position. The United States' statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' statement of position shall be binding on Bradford, unless Bradford files a motion for judicial review of the dispute in accordance with the following Paragraph.

43. Bradford may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) days of receipt of the United States' statement of position pursuant to the preceding Paragraph. The motion shall contain a written statement of Bradford'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. Bradford's motion to the Court shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

44. The United States shall respond to Bradford's motion within the time period provided in the local rules of the Court, unless the Parties stipulate otherwise. Bradford may file a reply memorandum to the extent permitted by the local rules or the Parties' stipulation, as applicable.

45. In any judicial proceeding pursuant to this Section's formal dispute resolution procedures, Bradford shall bear the burden of demonstrating that its position clearly complies with, and furthers the objectives of, this Consent Decree and the CAA or RCRA, and that Bradford is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

46. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect any obligation of Bradford under this Consent Decree not directly in dispute, unless the final resolution of the dispute so dictates. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of nonperformance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If Bradford does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII above.

47. The assessment of stipulated penalties pursuant to Paragraph 25 regarding Bradford's failure to timely pay its civil penalty shall not be subject to dispute resolution under this Section. For such assessments, the United States' determination regarding the lateness of the civil penalty and any stipulated penalties assessed as a result shall be unreviewable and final.

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations.

49. Except as expressly provided in this Section, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA or RCRA, any regulations or permits issued pursuant to the CAA or RCRA, or any other federal or state laws, regulations, or permits.

50. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations, and in no way relieves Bradford of its responsibility to comply with all applicable federal, state, and local permits, laws and regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Bradford's compliance with any aspect of this Consent Decree will result in compliance with the provisions of the CAA or RCRA, or with any regulations or permits issued thereunder.

51. This Consent Decree does not limit or affect the rights of Bradford 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 Bradford, except as otherwise provided by law.

52. 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.

53. Except as expressly provided in this Consent Decree, the United States reserves all legal and equitable remedies available to enforce the provisions of the Decree. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health, welfare or the environment arising at or posed by Bradford's facilities, whether related to the violations addressed in this Consent Decree or otherwise.

XI. NOTICES

54. Unless otherwise specified herein, whenever written notifications, information or reports are required by this Consent Decree, they shall be sent to the individuals and addresses specified below:

As to the United States:

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

Steven Viggiani
Senior Enforcement Counsel
Office of Environmental Stewardship
U. S. EPA, Region 1
One Congress Street (Mailcode SEL)
Boston, Massachusetts 02114-2023

As to Bradford:

Richard Satin
President
Bradford Industries, Inc.
1857 Middlesex Street
Lowell, Massachusetts 01852

55. All reports and other written information required by this Consent Decree to be prepared and sent by Bradford to the United States shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its

attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

56. Bradford shall ensure that such certified statement is signed by a responsible corporate officer, such as a president, vice-president, secretary, treasurer, senior manager responsible for environmental policy making and decision making, or other person responsible for a principal business function.

57. Written notices made pursuant to this Section shall be deemed provided upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. When a notice or other submittal deadline falls on a weekend day or federal holiday, the applicable submittal deadline shall be extended to the next business day.

XII. COSTS

58. Each party shall bear its own costs, disbursements and attorneys' fees in this action, and specifically waives any right to recover such costs, disbursements or attorneys' fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law. However, the United States shall be entitled to collect its

costs, disbursements and attorneys' fees incurred in any action necessary to collect any outstanding penalties due under this Consent Decree or to otherwise enforce the Decree.

XIII. MODIFICATION

59. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

60. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX, provided, however, that instead of the burden of proof provided by Paragraph 45, 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).

XIV. INTEGRATION

61. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XV. SIGNATORIES/SERVICE

62. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

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

64. Bradford agrees to accept service of process by mail with respect to all matters arising under 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. Bradford agrees that the following agent is authorized to accept the above-described service of process on Bradford's behalf:

Richard Satin
President
Bradford Industries, Inc.
1857 Middlesex Street
Lowell, Massachusetts 08152

Bradford shall notify the United States as specified in Section XI above of any change in the identity or address of Bradford, its agent for service, or its counsel.

XVI. PUBLIC PARTICIPATION

65. This Consent Decree shall be lodged with the Court for a period of not less than thirty (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, upon

consideration of any comments received regarding the Consent Decree, the United States concludes that the Consent Decree is inappropriate, improper, or inadequate. Bradford consents to entry of the Consent Decree without further notice or proceedings. Bradford agrees not to withdraw from or oppose the entry of the Decree or to challenge any of the Decree's provisions, unless the United States has notified Bradford in writing that it no longer supports entry of the Decree.

66. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party, and the terms of the agreement may not be used as evidence in any litigation between the parties.

XVII. EFFECTIVE AND TERMINATION DATES

67. This Consent Decree shall be effective upon the date of its entry by the Court.

68. Bradford may provide the United States with a written request for termination of this Consent Decree after Bradford has (a) maintained compliance with this Consent Decree for a period of three (3) years after the Decree's effective date, and (b) paid the civil penalty and any stipulated penalties required by this Consent Decree. The request for termination shall state that Bradford has satisfied the above requirements, and shall include any necessary supporting documentation.

69. Following receipt by the United States of Bradford's request for termination, the Parties shall confer informally concerning the request and any

disagreement that the Parties may have as to whether Bradford has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

70. If the United States does not agree that the Consent Decree may be terminated, Bradford may invoke dispute resolution under Section IX above. However, Bradford shall not seek such dispute resolution until sixty (60) days after service of its request for termination.

XVIII. RETENTION OF JURISDICTION

71. 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, or effectuating or enforcing compliance with the terms of this Decree.

XIX. FINAL JUDGMENT

72. 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.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____ day of _____ 200_.

UNITED STATES DISTRICT JUDGE

UNITED STATES V. BRADFORD INDUSTRIES, INC.
CONSENT DECREE

For Plaintiff, UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

By:

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

7/22/09
Date

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7/28/09
Date

UNITED STATES V. BRADFORD INDUSTRIES, INC.
CONSENT DECREE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

6/3/09

Date

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5/28/09

Date

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UNITED STATES V. BRADFORD INDUSTRIES, INC.
CONSENT DECREE

FOR Defendant, BRADFORD INDUSTRIES, INC.

RICHARD SATIN
President
Bradford Industries, Inc.
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5/21/09
Date

APPENDIX I -- ENVIRONMENTAL COMPLIANCE AUDITS

A. General Provisions

1. This Appendix provides for two independent multi-media audits of the current compliance of Bradford Industries, Inc. (“Bradford”) with the Clean Air Act (“CAA”), Clean Water Act (“CWA”), Resource Conservation and Recovery Act (“RCRA”), Toxic Substances Control Act (“TSCA”), Emergency Planning and Community Right-to-Know Act (“EPCRA”), Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), and these statutes’ various implementing regulations (collectively, the “listed statutes and regulations”), and with any federal or state permits issued or pending to be issued pursuant to the listed statutes and regulations or any analogous state statutes or regulations (collectively, the “environmental permits”).

2. The audits shall be conducted at Bradford’s manufacturing facility located at 75 Rogers Street in Lowell, Massachusetts (the “Facility”).

3. Each audit shall include, but not be limited to, an evaluation of the Facility’s (a) operating procedures and practices, (b) sources of air pollutant emissions, including all coating mix equipment in the Facility’s “Urethane Compound Room,” (c) air emissions controls, (d) operations and maintenance procedures and practices for any such controls, (e) water and water pollutant sources, handling, treatment and discharge, (f) solid and hazardous waste generation, handling, storage, transportation and disposal, and (g) all monitoring, recordkeeping and reporting procedures and practices, in order to

evaluate Bradford's current compliance with the listed statutes and regulations and with its environmental permits at the Facility. The first audit shall also include a CAA Section 112(r)(1) hazard assessment for fabric coating operations (including operation exhausts) regarding combustible coated fabrics, dusts, and vapors.

4. Each audit shall be conducted by an independent environmental auditing firm (“audit firm”) retained by Bradford. The audit firm shall submit a final report of its findings and recommendations to Bradford, the U.S. Environmental Protection Agency, Region I (“EPA”), and to a representative of the Massachusetts Department of Environmental Protection (“DEP”) as designated by EPA in writing.

5. The requirements of this Appendix relating to audit firm's qualifications, authority to conduct the audits, and production of the final audit reports shall be incorporated in any contracts relating to the audits entered into by Bradford and the audit firm(s).

6. Because these audits are required by the Consent Decree settling EPA’s CAA and RCRA enforcement action against Bradford, any violations discovered pursuant to either of the audits are not “voluntarily discovered” within the terms of EPA's revised Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations policy ("Audit Policy"), and are not voluntarily disclosed to EPA under EPA penalty policies. Accordingly, any such violations are ineligible for penalty mitigation or other favorable treatment under the Audit Policy or any EPA penalty policies on that basis. Bradford agrees not to attempt to use any state audit and/or privilege laws that

would in any way restrict EPA's ability to obtain, review or use the audit reports in any federal compliance or enforcement action.

B. Quarterly Reporting

7. Bradford's quarterly reports required by Section VI of the Consent Decree shall contain the following information regarding the performance of the environmental audits:

- (a) a summary of the current status of the audits;
- (b) a description of what has been accomplished regarding the audits during the previous quarter, with specific reference to any performance or implementation deadlines occurring in the quarter;
- (c) a description of any problems encountered during the quarter that may impact Bradford's ability to perform the audits in accordance with this Appendix, and any steps taken to remedy the problems;
- (d) a specific identification of any noncompliance with any of the requirements of this Appendix during the quarter; and
- (e) a summary of any audit performance costs incurred during the quarter.

8. Bradford may suspend the quarterly audit reporting required by this Appendix and Section VI of the Consent Decree during the period between the completion of the first audit's Final Report and the proposal of an audit firm for the second audit as specified in Paragraph 26 of this Appendix. Bradford may terminate the quarterly audit reporting altogether upon submission of the second audit's Final Report.

C. Audit Firm

9. Not later than ten (10) days after the entry date of the Consent Decree ("Entry Date"), Bradford shall submit in writing the names of one or more proposed audit firms to EPA for approval. Bradford shall include a description of each audit firm's qualifications, and the certification required by Paragraph 11 below.

10. The audit firm shall be familiar with environmental auditing and with the listed statutes and regulations, including but not limited to federal CAA regulations promulgated at 40 C.F.R. Parts 60 and 63, and federal RCRA regulations promulgated at 40 C.F.R. Parts 262, 264 and 265. The audit firm shall also have or obtain expertise with conducting a CAA Section 112(r) hazard assessment for facilities similar in size and operation to Bradford's. The audit firm shall be provided with a copy of the Complaint in this case to apprise the firm of Bradford's specific alleged environmental violations. During the course of the audit, the audit firm shall become familiar with Bradford's environmental permits, and with the Facility elements set out in Paragraph 3 above.

11. Neither the audit firm, nor any person presently employed by the firm, shall have been employed by Bradford to conduct an environmental audit or any other environmental compliance-related activities at the Facility at any time during the past five (5) years. Bradford shall require the audit firm(s) to sign a certification to this effect.

12. EPA shall have thirty (30) days to accept or reject Bradford's proposed audit firm(s). If EPA does not provide written notice to Bradford of its determination within thirty (30) days, Bradford's proposed audit firm(s) shall be deemed acceptable to EPA. If EPA rejects the proposed audit firm(s), Bradford shall propose one or more alternate audit firms for EPA's approval not later than thirty (30) days after receipt of notice of EPA's determination.

D. Work Plan

13. Within sixty (60) days of EPA's approval of the audit firm(s), Bradford and the audit firm shall contract to perform the audit, and Bradford shall submit to EPA a proposed audit work plan ("Work Plan") written by the audit firm for EPA's review and approval. The proposed Work Plan shall include auditing protocols, procedures, and specific tasks for the audit (including, for the first audit, a detailed review of air pollution sources and control requirements for all coating mix equipment in the Urethane Compound Room, and procedures for the CAA Section 112(r) hazard assessment), but shall not restrict the audit firm from conducting such additional inquiries as may be necessary to accomplish the purposes of the audit. The proposed Work Plan shall also

include the schedule for performing the audit, and the names and resumes of the audit firm employees who will perform it.

14. EPA shall have thirty (30) days from the date of receipt of the Work Plan, or any revised Work Plan, to approve or comment on it. If EPA does not provide written comments to Bradford regarding the original or any revised Work Plan within this thirty (30) day period, the Work Plan shall be deemed approved by EPA. If EPA comments on the Work Plan or any revised work plan, Bradford shall incorporate EPA's comments and submit a revised Work Plan to EPA within fifteen (15) days after receiving the comments. The approved Work Plan shall be incorporated into the Consent Decree and shall be enforceable thereunder.

E. Audit Performance

15. Within thirty (30) days after EPA approves the Work Plan, the audit firm shall commence the audit, which shall be performed in accordance with the approved Work Plan.

16. The audit firm shall have full access to, and unrestricted review of, any of Bradford's records, documents and information that will assist the audit firm in determining Bradford's current compliance with the listed statutes and regulations and the environmental permits. If necessary, the audit firm shall also review state or federal records to determine Bradford's compliance status.

17. The audit firm shall perform at least one on-site inspection at the Facility, and shall have access to all units, areas, equipment, and structures at the Facility during

the inspection(s), and at all other times during normal operating hours. In its discretion, EPA may accompany the audit firm during the firm's inspection(s).

18. The audit firm shall observe and review actual air and water pollution control operation and maintenance procedures, and solid and hazardous waste generation, handling and disposal procedures at the Facility, and may request that testing, sampling or other procedures be performed as needed to determine Bradford's present compliance with the listed statutes and regulations and the environmental permits. Bradford and the audit firm shall arrange for the requested testing, sampling or other procedures to be conducted. If Bradford itself performs any of the requested procedures, the audit firm and EPA, at EPA's discretion, shall be given the opportunity to observe and review them.

19. If in the course of performing the audit or hazard assessment, the audit firm discovers a condition at the Facility that, in the audit firm's independent judgment, constitutes an imminent and substantial endangerment to human health or the environment, or of fire, the audit firm shall immediately notify Bradford and EPA of the condition. Bradford shall immediately address and ameliorate the condition and immediately consult with EPA as to how best to eliminate it.

F. Audit Report

20. Within one hundred twenty (120) days after EPA's approval of the Work Plan, the audit firm shall complete the audit and deliver a written final audit report ("Final Report") to Bradford, EPA and the Massachusetts DEP. Two copies of the Final Report shall be provided to EPA. The audit firm shall also provide EPA with a copy of any draft

versions of the audit report, and any letters or other correspondence, provided or sent to Bradford after Bradford contracts with the audit firm, regarding the performance or preliminary results of the audit. Any such draft audit report(s), letters or correspondence shall be provided to EPA at the same time and in the same manner as they are provided to Bradford.

21. The Final Report shall describe in detail the results of the audit, including, but not limited to, the following:

- (a) the procedures followed and the information consulted and evaluated during the audit;
- (b) Bradford's current compliance obligations at the Facility with regard to the listed statutes and regulations and Bradford's environmental permits;
- (c) Bradford's current compliance status at the Facility with regard to the listed statutes and regulations and its environmental permits, including any current potential noncompliance with any of these statutes, regulations or permits;
- (d) any potential noncompliance identified by the audit firm or Bradford during the course of the audit that was corrected prior to the issuance of the Final Report, including the date(s) on which the noncompliance commenced and was corrected;
- (e) for the first audit, the results of the hazard assessment, including any additional recommended fire prevention measures and/or fire communication protocols for the Facility;
- (f) recommendations for potential improvements or modifications to Bradford's environmental compliance program or operating procedures and practices at the Facility to ensure compliance with the listed statutes and regulations and Bradford's environmental permits; and

(g) any other information relating to Bradford's compliance with the listed statutes and regulations and Bradford's environmental permits that in the judgment of the audit firm merits review by EPA or Bradford.

The Final Report shall include a specific discussion of Bradford's CAA-related compliance obligations, and compliance status, for all coating mix equipment located in the Urethane Compound Room from 2007 to the present.

22. Bradford shall address and fully correct as soon as possible any potential noncompliance identified in the Final Report. Within fourteen (14) days after receiving the Final Report, Bradford shall provide written notice to EPA describing what actions Bradford has taken and/or will take to fully correct the noncompliance. If these actions will extend further than thirty (30) days from the receipt of the Final Report, Bradford shall include in the written notice a detailed schedule for fully correcting the noncompliance.

23. If Bradford believes that any identified potential noncompliance in the Final Report does not constitute actual noncompliance, Bradford shall, as part of the written notice required in Paragraph 22, provide to EPA a detailed explanation of Bradford's views. If requested by either party, EPA and Bradford shall meet within thirty (30) days of receipt of the Final Report to discuss the report and its findings.

G. Effect of Final Reports and Audit

24. Nothing in this Appendix I or elsewhere in the Consent Decree shall be construed as an adoption of or an approval by the United States or by EPA of any opinions, findings, conclusions, or other asserted facts or statements contained in the

Final Reports, or of any actions taken by Bradford in response to the Final Reports. The United States fully reserves its rights, in accordance with the terms of the Consent Decree, to address any noncompliance discovered through the audits. The completion and submission of the Final Reports shall not be construed as an admission, adoption, or approval by Bradford of any opinions, findings, conclusions, or other statements contained in the Final Reports.

H. Second Audit

25. After the implementation of the environmental management measures required by Paragraphs 16 through 19 of this Consent Decree, Bradford shall arrange for a second environmental compliance audit (“second audit”) on the same general terms and conditions as set out above. In addition to assessing Bradford’s compliance with the listed statutes and regulations and environmental permits, this second audit also shall assess Bradford’s implemented environmental management measures, and shall recommend any needed modifications or improvements to them to ensure that Bradford is able to achieve and maintain environmental compliance at the Facility.

26. The second audit shall commence with Bradford’s submission of the names of one or more proposed audit firms to EPA not earlier than one hundred twenty (120) days after the first audit’s Final Report is completed, but not later than one hundred twenty (120) days after the one year anniversary of the Entry Date. Notwithstanding Paragraph 11 of this Appendix, the audit firm that conducted the first audit may be

proposed by Bradford to conduct the second audit.