

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff) CIVIL ACTION
and)
)
LOUISVILLE METRO AIR POLLUTION)
CONTROL DISTRICT,)
)
) Plaintiff)
)
) v.)
)
D.D. WILLIAMSON & CO., INC.,)
)
) Defendant.)
_____)

CONSENT DECREE

I. BACKGROUND

1. WHEREAS, Plaintiff, the United States of America (“United States”), on behalf the United States Environmental Protection Agency (“EPA”), has filed a Complaint against D.D. Williamson & Co., Inc. (“D.D. Williamson”) for its failure to fulfill its general duty under Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1), and failure to meet its obligations pursuant to the risk management plan requirements under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), at its caramel coloring manufacturing company in Louisville, Kentucky.

2. WHEREAS, the Louisville Metro Air Pollution Control District (“District”), has joined in the Complaint alleging similar violations under applicable state and local laws, and the

District has joined this settlement as signatory to this Consent Decree;

3. WHEREAS, by agreeing to entry of this Consent Decree, D.D. Williamson makes no admission of law or fact with respect to any of the allegations set forth in the Consent Decree or the Complaint filed herewith.

4. WHEREAS, D.D. Williamson has expended significant resources in reconstructing and redesigning the Facility to enhance safety requirements;

5. WHEREAS, the Parties entered into negotiations in 2007 to ensure compliance with the CAA, state, and local laws at the Facility without resorting to litigation;

6. WHEREAS, these negotiations have resulted in the settlement embodied in this Consent Decree;

7. WHEREAS, D.D. Williamson has waived all applicable federal, state, or local requirements of statutory notice of the alleged violations;

8. WHEREAS, the United States, the District, and D.D. Williamson agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that the Decree is fair and reasonable, in the public's interest, and will benefit the public health, safety, and the environment.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and also has personal jurisdiction over D.D. Williamson.

10. D.D. Williamson consents to and shall not challenge entry of this Decree, or this Court's jurisdiction over this action, and does not contest venue in this judicial district.

III. PARTIES BOUND

11. The obligations of this Consent Decree apply to and are binding on the United States, the District, and on D.D. Williamson and its officers, directors, agents, trustees, servants, employees, successors, and assigns. Any change in ownership or corporate or other legal status of D.D. Williamson, including, but not limited to, any transfer of assets of real or personal property, shall in no way alter the status or responsibilities of D.D. Williamson under this Consent Decree.

12. The undersigned representatives certify that they are fully authorized to enter into the Consent Decree and to execute and to bind the Parties to the Consent Decree.

13. At least thirty (30) Days prior to transferring ownership or operation of the Facility to any other person, D.D. Williamson must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve D.D. Williamson of its obligations to ensure that the terms of this Consent Decree are implemented.

14. D.D. Williamson shall provide a notice of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. If requested by a person or entity listed in this paragraph, D.D. Williamson shall provide a copy of this Consent Decree to that person or entity.

15. In any action to enforce this Consent Decree, D.D. Williamson may not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any

actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

16. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CAA, or in the regulations promulgated pursuant to the CAA, shall have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- A. "Complaint" shall mean the Complaint filed by the United States and the District in this action;
- B. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control;
- C. "Consultant " shall mean the independent third-party engineering consultant hired by D.D. Williamson to undertake work pursuant to this Consent Decree;
- D. "Day(s)" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business the next business day;
- E. "District" shall mean the Louisville Metro Air Pollution Control District;
- F. "Effective Date" shall mean the date of entry of this Consent Decree by the Court;
- G. " EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;
- H. "ERP" shall mean Emergency Response Plan;

- I. "Facility" shall mean the D.D. Williamson facility located at 1901 Payne Street, Louisville, Kentucky 40206;
- J. "HAZOP " shall mean the Hazard and Operability Study that is a systematic qualitative technique to identify and evaluate process hazards and potential operating problems;
- K. "IP&S" shall mean Implementation Plan and Schedule;
- L. "Mechanical Integrity" shall mean the process of ensuring that manufacturing equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases;
- M. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter;
- N. "Parties" shall mean the United States, the Louisville Metro Air Pollution Control District, and D.D. Williamson & Co., Inc.;
- O. "PHE" shall mean Process Hazard Evaluation;
- P. "Processes" shall mean the Spray Dryer Processes, all raw materials storage tanks (with the exception of tanks storing corn syrup or sugar syrup), and all cookers/reactors operated under pressure at the Facility;
- Q. "Responsible Official" shall mean the following D.D. Williamson personnel: Chief Executive Officer or Vice-President, Global Manufacturing, or the Facility Plant Manager pursuant to the Responsible Person definition under 40 C.F.R. 122.22;
- R. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

- S. "Spray Dryer Processes " shall mean the Niro Spray Dryer, the Blend Tanks, the Powder Packaging System, and their associated equipment located at the Facility;
and
- T. "United States" shall mean the United States of America.

V. COMPLIANCE REQUIREMENTS

17. D.D. Williamson shall carry out the following compliance work:

SELECTION OF AN ENGINEERING CONSULTANT

18. D.D. Williamson shall hire an independent third-party engineering consultant ("Consultant") to complete the compliance work required in Paragraphs 22 through 57 below.

19. D.D. Williamson has proposed that the compliance work described herein will be conducted by the firm of URS Corporation ("URS"). Based upon information provided by D.D. Williamson, EPA, the District, and D.D. Williamson have agreed that URS shall be the Consultant hired to carrying out the compliance work pursuant to this Consent Decree.

20. If, after the effective date of this Consent Decree, D.D. Williamson chooses to hire an alternative Consultant to URS to undertake the compliance work, D.D. Williamson shall give reasonable notice of such decision to EPA and the District and request approval of the new Consultant. As to any Consultant hired, D.D. Williamson shall remain obligated to comply with all the requirements of this Consent Decree, including its appendices.

21. D.D. Williamson shall contractually require the Consultant to carry out the compliance work in accordance with all requirements of this Consent Decree.

PROCESS HAZARD EVALUATION

22. The Consultant, with the assistance of D.D. Williamson, shall develop and implement a Process Hazard Evaluation ("PHE") for each the Processes. The PHE will consist of two phases: a) an information gathering phase; and b) the undertaking of the HAZOP.

23. The Consultant, with the assistance of D.D. Williamson, will gather information on the chemicals used at the Facility in the Processes. When applicable, this information shall include, but is not limited to:

- A. Toxicity;
- B. Permissible exposure limits;
- C. Physical data;
- D. Reactivity data;
- E. Corrosion data;
- F. Thermal and chemical stability data; and
- G. Hazardous effects of inadvertent mixing of these various chemical materials.

If the Consultant is not able to gather any of the information sought by this Paragraph, the Consultant shall state so in writing and briefly explain why the requested information is not relevant or not necessary to conduct the HAZOP.

24. As part of the PHE, the Consultant, with the assistance of D.D. Williamson, will gather information on the technology used in each manufacturing process. When applicable, this information shall include, but is not limited to:

- A. Block flow diagram of manufacturing process;
- B. Process chemistry;
- C. Maximum intended inventory;
- D. Safe upper and lower limits for operating parameters such as temperature, pressure, flow, and compositions; and
- E. Evaluation of consequences for deviations from operating parameters.

If the Consultant is not able to gather any of the information sought by this Paragraph, the Consultant shall state so in writing and briefly explain why the requested information is not relevant or not necessary to conduct the HAZOP.

25. As part of the PHE, the Consultant, with the assistance of D.D. Williamson, will gather information on the equipment used in the Processes. When applicable, this information shall include, but is not limited to:

- A. Materials of construction;
- B. Piping and instrument diagrams;
- C. Electrical classification;
- D. Pressure Relief system design and design basis;
- E. Ventilation system design;
- F. Design codes and standards employed;
- G. Material and energy balances;
- H. Safety systems such as interlocks, detection or suppression systems; and
- I. Documentation that equipment complies with all recognized and generally accepted good engineering practices

If the Consultant is not able to gather any of the information sought by this Paragraph, the Consultant shall state so in writing and briefly explain why the requested information is not relevant or not necessary to conduct the HAZOP.

PROCESS HAZARD ANALYSIS

26. After the Consultant has gathered all the information referenced in Paragraphs 22 through 25, the Consultant, with the assistance of D.D. Williamson, will conduct a Process Hazard Analysis using the HAZOP. However, the HAZOP conducted by URS, with the assistance of D.D. Williamson, of certain operations in 2008 that was submitted to EPA and the District does not have to be duplicated. Upon completion of the HAZOP, the Consultant shall develop recommendations to address any deficiencies discovered during the review.

OPERATING PROCEDURES ANALYSIS

27. The Consultant shall evaluate the written operating procedures of the Processes. Upon completion of the review of the operating procedures, the Consultant shall develop recommendations to address any deficiencies discovered during the review.

28. The Consultant shall evaluate and address, as a minimum, whether the following elements are appropriately contained in the written procedures:

- A. Steps for initial startup, normal operations, temporary operation, emergency shutdown, emergency operations, normal shutdown, and start-up following an emergency shutdown,

- B. Operating limits, i.e., consequences of deviation, steps required to correct or avoid deviation,
- C. Safety and health considerations – including engineering and administrative controls and personal protective equipment in place.

FACILITY DESIGN ANALYSIS

29. The Consultant shall evaluate and address the design of the Facility. Upon completion of the review of the Facility's design, the Consultant shall develop recommendations to address any deficiencies discovered during the review.

30. The Consultant shall evaluate and address the following questions in its evaluation of the Facility design.

- A. Are the design documents for the tanks containing ammonia and for the spray dryer correct, accurate, and current?
- B. Were the design codes used in the design of the equipment in the Processes identified and appropriate for each process?
- C. Were the Processes constructed according to the design specifications?
- D. Are there redundant safety systems installed on the Processes?

MAINTENANCE OPERATIONS ANALYSIS

31. The Consultant shall evaluate the maintenance procedures and programs that are currently in place for the Facility. Upon completion of the review of the maintenance procedures and programs, the Consultant shall develop recommendations to address any deficiencies discovered during the review.

32. The Consultant shall address, as a minimum, the following questions in its evaluation of the Facility's maintenance procedures and programs.

- A. Are there preventive maintenance procedures to ensure the mechanical integrity of the process equipment for each of the Processes.
- B. Do the maintenance procedures and preventive schedules follow generally accepted engineering practices?
- C. Are maintenance personnel trained on the intrinsic hazards of the chemicals used in each of the Processes and the maintenance procedures?

- D. Is there a quality control program to ensure spare parts meets specifications, and is it implemented and working?

EMERGENCY RESPONSE PLAN ANALYSIS

33. The Consultant shall evaluate the Facilities' Emergency Response Plan ("ERP"). Upon completion of the review of the emergency response plan, the Consultant shall develop recommendations to address any deficiencies discovered during the review.

34. The Consultant shall address the following questions in its evaluation of the Facility's ERP.

- A. Is the ERP based on credible accidental release scenarios?
- B. Does the ERP clearly identify responsibilities, functions, and contacts for emergency response?
- C. Does the ERP include coordination with local emergency responders?
- D. Are employees trained on emergency response actions?
- E. Are routine exercises conducted to practice emergency response?
- F. Are employees trained to recognize emergency situations and are they empowered to take actions to prevent them or mitigate them?
- G. Is the ERP revised as manufacturing processes are altered?

COMPLIANCE WORK PLAN

35. D.D. Williamson will have forty-five (45) Days from the effective of the Consent Decree to submit a Statement of Work (SOW) to conduct the compliance work. The SOW shall describe in detail all of the work to be undertaken pursuant to Paragraphs 22 through 34 of this Consent Decree, the procedures to be followed, and the time deliverables for commencement and completion of the work. The SOW shall identify D.D. Williamson key personnel who will be assigned to carry out the compliance work with the Consultant, and the specific responsibilities of each person.

36. The SOW shall specify a schedule for the commencement and completion of all of the compliance work (Paragraphs 22 through 34), submitting the Draft Work Report (described

below), submitting the Final Work Report (described below), and completing all tasks set forth in the SOW.

37. EPA shall approve the SOW, conditionally approve the draft SOW outlining the required modifications, or disapprove the SOW and notify D.D. Williamson in writing of required changes to the SOW. EPA shall use its best efforts to attempt to respond to the SOW within thirty (30) Days of receipt.

38. If EPA disapproves the SOW or conditionally approves the SOW, D.D. Williamson shall, through its Consultant, submit a revised SOW addressing the comments noted by EPA within thirty (30) Days from the date of receipt of EPA's notification of deficiencies. After receipt of the D. D. Williamson's modified SOW, EPA shall either approve or disapprove the modified SOW.

39. If EPA approves the SOW or approves the modified SOW with modifications acceptable to D.D. Williamson, it shall be binding on D.D. Williamson.

40. If EPA disapproves the modified SOW, or approves the SOW with modifications unacceptable to D.D. Williamson, EPA and D.D. Williamson shall endeavor to negotiate an acceptable modified SOW in the fifteen (15) Days following D.D. Williamson's receipt of EPA's notification of deficiencies. If the dispute remains unresolved after fifteen (15) Days, D.D. Williamson shall follow the position of EPA unless D.D. Williamson invokes the formal dispute resolution procedures in Section XI ("Dispute Resolution") of this Consent Decree.

41. D.D. Williamson shall, through its Consultant, perform all actions required by EPA in its approved SOW.

42. D.D. Williamson, through its Consultant, shall begin the tasks required by the final SOW in accordance with the approved schedule. The approved schedule shall not require that the Consultant begin the tasks required by the SOW until EPA has approved the final SOW.

43. The approved SOW, including all schedules, shall be incorporated by reference into this Consent Decree and shall be fully enforceable hereunder. Any additional modifications

to the approved SOW, including all schedules, which shall be made only upon the written approval of EPA, shall also be incorporated by reference into this Consent Decree and shall be fully enforceable hereunder. D.D. Williamson shall contractually require the Consultant to carry out all of the compliance work, including all schedules, pursuant to all requirements of the approved SOW and this Consent Decree.

44. The Consultant shall have full access to, and may review in their entirety, all non-privileged records, documents, and information for the Facility necessary and appropriate for completion of any reports specified in the SOW, and may interview, as necessary and appropriate, employees at the Facility. If D.D. Williamson refuses to provide the Consultant with any privileged record, document or information for the Facility, or to permit candid employee interviews regarding the Facility, which the Consultant determines would be useful completion of the reports specified in the SOW, the Consultant should so note in the final report required by the SOW. If D.D. Williamson asserts such a privilege with regard to any record, document, or information, it shall provide EPA with the following: (1) the title of the record, document, or information; (2) the date of the record, document, or information; (3) the author of the record, document or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record, document, or information; and (6) the privilege asserted.

45. Notice of individual visits by the Consultant to the Facility shall be provided to EPA at least ten (10) Days prior to the Consultant's visits. However, visits to the Facility by URS' Louisville personnel made only to pick up documents do not require advance notice. EPA and the District may observe the performance of the compliance work to ensure that the procedures and protocols required by the approved SOW and the Consent Decree are followed. EPA and District shall have the right to accompany D.D. Williamson's representatives and/or the Consultant on the Facility visits in carrying out the compliance work.

46. To the extent necessary to meet the requirements of the SOW, the Consultant shall obtain and test samples of D.D. Williamson's manufacturing process streams, wastes, or emissions.

47. In accordance with the schedule in the SOW, D.D. Williamson shall, through its Consultant, submit to EPA and the District a draft compliance work report and related documents ("Draft Work Report") and a final compliance work report and related documents ("Final Work Report") for the Facility. D.D. Williamson shall, through its Consultant, submit as related documents to the Draft and Final Work Report(s) all material produced by Consultant in the course of conducting the compliance work, including, but not limited to, field notes and any of the Consultant's completed checklists. With the exception of the Draft Work Report and any notice required under Section VI ("Reporting") of this Consent Decree, the Consultant's initial findings or tentative conclusions, including any internal drafts of the Work Report, shall not be submitted by the Consultant to D.D. Williamson or EPA for their review, comment, or evaluation. Submittals to EPA and the District required by Paragraph 47 through Paragraph 50 or required or permitted under any provision of this Consent Decree may be made subject to the confidentiality provisions of 5 U.S.C. § 552(b)(4) and Louisville Metro Air Pollution Control District Regulation 1.08 § 6.2 and KRS § 61.878(1)(c)(I) or other applicable law.

48. The Draft and Final Work Report shall in detail:

- A. State the procedures followed and resources consulted by the Consultant in conducting the compliance work; and
- B. Identify all information and data evaluated by the Consultant during the compliance work; and
- C. Identify all of the Consultant's recommendations to D.D. Williamson stemming from its completion of the compliance work.

49. EPA, after consultation with the District, and D.D. Williamson shall provide any comments on the Draft Work Report in writing to the Consultant, with a copy of their comments provided to all Parties within sixty (60) Days of receipt of the Draft Work Report. If EPA, after

consultation with the District, or D.D. Williamson requests a meeting, the Parties and the Consultant shall meet within forty-five (45) Days of the Parties' submitting comments of the Draft Work Report to discuss any areas of disagreement (the "Meeting").

50. D.D. Williamson shall require that the Consultant issue the Final Work Report addressing each comment made within thirty (30) Days after (a) receiving all comments or (b) the Meeting, whichever is later. The Consultant need not resubmit with its Final Work Report those related documents which were originally submitted with the Draft Work Report if such related documents did not undergo amendments. In the event that comments on particular items from any of the Parties cannot be reconciled or the Consultant in its Final Report makes recommendations with which EPA, after consultation with the District, or D.D. Williamson disagree, EPA or D.D. Williamson may invoke Dispute Resolution under Section XI ("Dispute Resolution") of the Consent Decree.

IMPLEMENTATION PLAN & SCHEDULE

51. As soon as practicable, but no later than sixty (60) Days after receipt of the Final Work Report required under the SOW, D.D. Williamson shall submit to EPA an Implementation Plan and Schedule ("IP&S"), consisting of detailed descriptions and date certain implementation schedules for D.D. Williamson's plans to address each recommendation identified in the Final Work Report. The IP&S shall not address any recommendation or issue that is subject to Dispute Resolution, pursuant to Section XI, until the dispute has been resolved by the Parties or by the Court.

52. The description of D.D. Williamson's plans referred to in the preceding Paragraph shall include a description of actions already taken or underway to address the recommendations.

53. In writing, EPA shall approve, disapprove, or approve with modifications the IP&S within sixty (60) Days of receipt thereof. If EPA believes that it is practicable to implement a recommendation earlier than the schedule proposed by D.D. Williamson, they shall

so inform D.D. Williamson at that time stating all bases supporting their position. If D.D. Williamson disagrees with EPA's conclusions, D.D. Williamson may submit this matter to Dispute Resolution pursuant to Section XI ("Dispute Resolution") of this Consent Decree. D.D. Williamson's decision not to contest the Consultant's findings or EPA's proposals, pursuant to Paragraphs 46 through this Paragraph, shall not constitute an admission of any fact, circumstance, or liability in this or any other proceeding.

54. Upon written approval by EPA and D.D. Williamson's receipt of the same, the IP&S shall be incorporated into this Consent Decree and shall be fully enforceable hereunder.

55. D.D. Williamson shall fully fund the undertaking of the compliance work such that the work shall be fully and effectively conducted and implemented.

TRAINING

56. No later than 30 Days from the effective date of this Decree, D.D. Williamson shall provide to EPA the name of a training program which provides training in the performance of hazard analysis consistent with the American Institute of Chemical Engineers Guidelines for Hazard Evaluation Procedures. Within fourteen (14) Days from receipt of the name of the training program, EPA will either approve or disapprove of the training provider.

57. After EPA approves the training provider, D.D. Williamson will schedule both its Facility Plant Manager and Vice President, Global Manufacturing to attend the training program within six months from the date when EPA approves the training provider.

VI. REPORTING

58. D.D. Williamson shall submit reports quarterly beginning seventy-five (75) Days from the Effective Date until the Consent Decree is terminated. Each report will describe the last three (3) months' progress, ending fifteen (15) Days before the report's due date in meeting the requirements of this Consent Decree. No quarterly reports shall be due once the Draft Final Work Report is submitted to EPA and the District. After the IP&S is approved, D.D. Williamson shall resume the quarterly progress reports beginning seventy-five (75) Days after the IP&S is

approved. Each report will describe the last three (3) months' progress, ending fifteen (15) Days before the report's due date, of the steps undertaken to complete its approved IP&S. When D.D. Williamson believes it has completely implemented its approved IP&S and has met the Termination criteria as outlined in Section XVIII of this Consent Decree ("Termination"), it shall certify such compliance in its quarterly progress report. These reports shall be signed by a Responsible Official of D.D. Williamson who affirms the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Each quarterly progress report shall be submitted U.S. EPA at the following address:

United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104

59. Compliance with the reporting and notification requirements imposed by this Consent Decree shall not relieve D.D. Williamson of any applicable requirements imposed by federal, state, or local law.

VII. CIVIL PENALTY

60. Within thirty (30) Days of the Effective Date of this Consent Decree, D.D. Williamson shall pay a total civil penalty of \$300,000 to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Lockbox Bank account referencing both DOJ Case Number 90-5-2-1-08538 and the Civil Action Number assigned to this case by the United States District Court for the Western District of Kentucky. Payment shall be made in accordance with instructions provided to D.D. Williamson

by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Kentucky (Louisville Division) following lodging of the Consent Decree. Any EFTs received after 11:00 a.m. (EST) will be credited on the next business day. Copies of all documents accompanying the FedWire transfer and a transmittal letter referencing the Department of Justice case number, 90-5-2-1-08538, must simultaneously be mailed to all persons listed in Section XV ("Notices").

61. Within thirty (30) Days of the Effective Date of this Consent Decree, D.D. Williamson shall pay a total civil penalty of \$300,000 to the District. The payment to the District shall be made payable to the Louisville Metro Air Pollution Control District and sent to:

Terri E. Phelps
Enforcement Manager
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204

62. Interest on any portion of the civil penalty not paid within thirty (30) Days of the Effective Date shall continue to accrue through the date of full and complete payment. Interest shall accrue at the statutory rate set forth in 28 U.S.C. § 1961. Interest shall be payable pursuant to Section VIII ("Default") of this Consent Decree.

63. Upon the Effective Date of this Consent Decree, the United States shall be a judgment creditor of D.D. Williamson for purposes of collecting this penalty and enforcing this Consent Decree.

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

VIII. DEFAULT

65. If D.D. Williamson does not timely pay in full the civil penalty required by Section VII of this Consent Decree, D.D. Williamson will be liable to the United States for any reasonable attorney's fees, whether suit be brought or not, and all other costs and expenses

actually and reasonably incurred by the United States in connection with collecting the civil penalty.

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

IX. STIPULATED PENALTIES

67. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, D.D. Williamson shall pay stipulated penalties in the amounts set forth below for each failure to comply with the requirements of this Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, and completion of the requirements under this Consent Decree within the specified time schedules established by and approved under this Consent Decree, as set forth in Section V ("Compliance Requirements").

68. The following Stipulated Penalties will accrue per violation per Day for any noncompliance with the provisions of Section V (Paragraphs 17 through 57) of this Consent Decree as follows:

1 st through 30 th Day	\$250.00
31 st through 60 th Day	\$500.00
61 st Day and beyond	\$1,000.00

69. The following Stipulated Penalties will accrue per violation per Day for any noncompliance with the provisions of Section VI of this Consent Decree as follows:

1 st through 30 th Day	\$100.00
31 st through 60 th Day	\$250.00
61 st Day and beyond	\$500.00

70. For each violation of any other provision of the Decree, Stipulated Penalties will accrue at a rate of \$100 per Day for the first thirty (30) Days, and \$250 per Day thereafter.

71. Stipulated Penalties are due and payable within thirty (30) Days of the date on which the United States makes a written demand for payment. Although the United States will make the written demand for payment of stipulated penalties, D.D. Williamson shall pay all Stipulated Penalties payments in equal 50% shares to the United States and to the District. Stipulated Penalties are payable in accordance with the following Paragraphs.

72. The United States may, in the unreviewable exercise of its discretion, reduce or waive the amount of Stipulated Penalties sought under this Consent Decree.

73. Notwithstanding the date of any demand for Stipulated Penalties, pursuant to Section IX (Paragraph 71), all Stipulated Penalties will begin to accrue on the Day after the performance is due or on the Day the violation occurs, whichever is applicable. Stipulated Penalties will continue to accrue until performance is completed or until the violation ceases. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

74. Stipulated Penalties will continue to accrue, as provided in accordance with Section IX (Paragraph 73), during any Dispute Resolution, with interest, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision of EPA, after consultation with the District, that is not appealed to the Court, accrued Stipulated Penalties determined to be due, together with accrued interest, must be paid to the United States and to the District within thirty (30) Days of the effective date of the agreement or the receipt of EPA's and the District's decision or order;

B. If the dispute is appealed to the Court and the United States or the District prevails in whole or in part, D.D. Williamson must, within thirty (30) Days after receipt of the Court's decision or order, pay all accrued Stipulated Penalties determined by the Court to be due, together with accrued interest, except as provided in Subparagraph C, below. However, if D.D. Williamson prevails, no such Stipulated Penalties shall be due;

C. If the District Court's decision is appealed by any Party, D.D. Williamson must, within fifteen (15) Days of receipt of the final appellate court decision, pay all accrued Stipulated Penalties determined by the Court to be owing to the United States and the District, together with accrued interest.

75. All Stipulated Penalties must be paid within thirty (30) Days after the United States makes a demand for payment.

76. Stipulated Penalties due to the United States must, as directed by the United States, be paid by EFT, or by certified or cashier's check in the amount due payable to the "United States Department of Justice," referencing DOJ No. 90-5-2-1-08538, and delivered to the office of the United States Attorney's Office, Western District of Kentucky, Louisville Division, 510 West Broadway, Louisville, Kentucky 40202.

77. Stipulated penalties due to the District shall be made payable to the Louisville Metro Air Pollution Control District and sent to:

Terri E. Phelps
Enforcement Manager
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204

78. D.D. Williamson must pay interest on any balance of Stipulated Penalties not paid within the time provided in Section IX (Paragraph 75). Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. If any Stipulated Penalty is not paid in full when due, the United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalty or interest thereon.

X. FORCE MAJEURE

79. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of D.D. Williamson, its contractors, or any entity controlled by D.D. Williamson, that delays the performance of any obligation under this Consent Decree despite D.D. Williamson's best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential Force Majeure event, and to address the effects of any such event as it is occurring, and after it has occurred, such that the delay is minimized to the greatest extent possible.

80. Examples of events that are not Force Majeure include, but are not limited to, unanticipated or increased costs or expenses of work, financial difficulties encountered by D.D. Williamson in performing such work, or the failure of D.D. Williamson or its representative(s) including contractors to make complete and timely application for any required approval or permit.

81. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which D.D. Williamson intends to assert a claim of Force Majeure, D.D. Williamson must provide notice in writing, as provided in Section XV ("Notices") of this Consent Decree, within ten (10) Days of the time D.D. Williamson first knew

of, or by the exercise of due diligence should have known of, the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and D.D. Williamson's rationale for attributing the delay to a Force Majeure event. Failure to comply with these notice requirements will render D.D. Williamson's ability to claim Force Majeure voidable by the United States as to the specific event for which D.D. Williamson failed to comply with the notice requirements outlined in this Paragraph.

82. D.D. Williamson has the burden of proving, by a preponderance of the evidence, that an event was a Force Majeure event; that D.D. Williamson gave the notice required by the preceding Paragraph; that D.D. Williamson took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay D.D. Williamson claims was attributable to the Force Majeure event was caused by that event or was warranted by the circumstances caused by that event.

83. EPA will notify D.D. Williamson in writing of its agreement or disagreement with D.D. Williamson's claim of a delay or impediment to performance within thirty (30) Days of receipt of the notice provided under Section X (Paragraph 81). If EPA agrees that D.D. Williamson could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, EPA will notify D.D. Williamson in writing of its agreement to an extension of time for D.D. Williamson's performance of the affected compliance requirement by a period not exceeding the delay actually caused by the event. In the event the Parties cannot agree, EPA's determination will govern unless D.D.

Williamson invokes formal Dispute Resolution pursuant to Section XI of this Consent Decree within fourteen (14) Days after EPA's notification. An extension of time for performance of one or more obligations affected by a Force Majeure event will not, of itself, extend the time for performance of any other obligation.

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

XI. DISPUTE RESOLUTION

85. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedure of this Section is the exclusive mechanism to resolve all disputes arising under this Consent Decree. The procedures set forth in this Section do not apply to actions by the United States to enforce obligations of D.D. Williamson that have not been disputed in accordance with this Section. D.D. Williamson's failure to seek resolution of or dispute under this section shall preclude D.D. Williamson from raising any such issue as a defense to an action by the United States to enforce any obligation of D.D. Williamson arising under this Consent Decree.

86. Any dispute which arises under or with respect to this Consent Decree will in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations may not exceed thirty (30) Days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends the other party a written notice of dispute.

87. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fourteen (14) Days after the conclusion of the informal negotiations period, D.D. Williamson invokes the formal Dispute Resolution procedures by serving on the United States, in accordance with Section XV ("Notices") of this Consent Decree, a written Statement of Position on the matter in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

88. Within thirty (30) Days after receipt of D.D. Williamson's Statement of Position, the United States will serve on D.D. Williamson its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within thirty (30) Days after receipt of the United States' Statement of Position, D.D. Williamson may submit a reply.

89. An administrative record of the dispute must be maintained by EPA and must contain all statements of position, including supporting documentation, submitted pursuant to this Section. This administrative record is the basis upon which the matter in dispute is to be resolved.

90. EPA Region 4 will issue a final decision resolving the dispute. Where the dispute pertains to the performance of the Compliance Requirements under Section V of this Consent Decree, the decision will be upon the administrative record maintained by EPA pursuant to Section XI (Paragraph 89). The decision of EPA Region 4 will be binding on D.D. Williamson, subject only to the right to seek judicial review, in accordance with Section XI (Paragraph 91) below.

91. The decision issued by EPA under Section XI (Paragraph 90) may be reviewed by this Court upon a motion filed by D.D. Williamson and served upon the United States within fourteen (14) Days of receipt of EPA's decision.

92. In any dispute before the Court, D.D. Williamson shall have the burden of proof and the scope of review shall be as set forth in 5 U.S.C. § 706. D.D. Williamson will bear the burden of demonstrating that its position complies with and furthers the objectives of this Consent Decree and the CAA. The Court may grant relief in accordance with applicable principles of law governing review of agency determinations on the administrative record, including but not limited to remanding the dispute for further consideration by the agency or supplementation of the records as appropriate.

93. The invocation of formal Dispute Resolution procedures under this Section will not extend, postpone or affect in any way any obligation of D.D. Williamson under this Consent Decree, not directly in dispute, unless the United States agrees or the Court orders otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first Day of noncompliance, but payment will be stayed pending resolution of the dispute as provided in Section IX (Paragraph 74). In the event that D.D. Williamson does not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section IX ("Stipulated Penalties").

XII. INFORMATION COLLECTION AND RETENTION

94. The United States and its representatives, including attorneys, contractors, and consultants, will have the right of entry to the Facility, at all reasonable times, upon presentation of credentials to:

- A. Monitor the progress of all requirements under this Consent Decree;
- B. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree; and
- C. Assess D.D. Williamson's compliance with this Consent Decree.

95. Until the termination of this Consent Decree, D.D. Williamson must retain, and must instruct their contractors and agents to preserve, all nonidentical copies of all records and documents (including documents in electronic form) now in their or their contractors' or agents' possession or control, and that relate in any manner to D.D. Williamson's performance of its obligations under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

96. At the conclusion of the document-retention period provided in the preceding Paragraph, D.D. Williamson must notify the United States, at the addresses indicated in Section XV ("Notices") below, at least ninety (90) Days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, D.D. Williamson must deliver any such records or documents to EPA. If EPA does not respond to D.D. Williamson's notice within the 90-Day period, or if EPA does not request that such documents be delivered to EPA's offices, then D.D. Williamson shall be free to dispose of such records at its discretion. D.D. Williamson may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If D.D. Williamson asserts such a privilege, it must provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or

information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege claimed by D.D. Williamson.

However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree may be withheld on the grounds that they are privileged.

97. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

98. Upon payment by D.D. Williamson of the civil penalty and interest, late fees, and other penalties, if any, as provided in Section VII (Civil Penalty) and Section IX (Stipulated Penalties), and performance of compliance requirements pursuant to Section V (Compliance Requirements), the United States covenants not to take civil judicial or administrative action against D.D. Williamson seeking civil penalties for the specific claims alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. Provided, however, that nothing herein shall preclude the United States from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

99. Upon payment by D.D. Williamson of the civil penalty and interest, late fees, and other penalties, if any, as provided in Section VII (Civil Penalty) and Section IX (Stipulated Penalties), and performance of compliance requirements pursuant to Section V (Compliance Requirements), the District covenants not to take civil judicial or administrative action against D.D. Williamson seeking civil penalties for the specific claims alleged in the Complaint in this

action through the date of lodging of this Consent Decree. Provided, however, that nothing herein shall preclude the District from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

100. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of D.D. Williamson.

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

102. D.D. Williamson is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. D.D. Williamson's compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

103. This Consent Decree does not limit or affect the rights of D.D. Williamson 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 D.D. Williamson, except as otherwise provided by law.

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

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

XIV. COSTS

106. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Section III (Paragraph 11) and Section IX (Paragraph 78).

XV. NOTICES

107. Whenever written notifications, submissions, or communications to the United States or to D.D. Williamson are required by this Consent Decree, they must be made in writing and addressed as follows:

As to EPA:

Phyllis Warrilow
Air Enforcement Section
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8931

As to the District:

Terri E. Phelps
Enforcement Manager
Louisville Metro Air Pollution Control District
850 Barret Avenue, Suite 200
Louisville, KY 40204-1745

Stacy Fritze Dott
Assistant County Attorney
Louisville Metro Air Pollution Control District
850 Barret Avenue, Suite 200
Louisville, KY 40204-1745

As to D.D. Williamson:

Theodore H. Nixon
Chief Executive Officer
D.D. Williamson & Co., Inc.
100 S. Spring Street
Louisville, KY 40206

Robert M. Connolly
Stites & Harbison PLLC
400 West Market Street, Ste 1800
Louisville, KY 40202-3352

108. A notice submitted pursuant to this Section will be deemed timely if it is correctly addressed and post marked on or before the date the notice is due, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. RETENTION OF JURISDICTION

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

XVII. MODIFICATION

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

D.D. Williamson's ability to meet the objectives of this Consent Decree.

XVIII. TERMINATION

111. Any party may move for termination of this Consent Decree after 30 Days of all of the following occurring:

- A. D.D. Williamson has complied with all the terms of this Consent Decree for a period of at least 24 consecutive months, and D.D. Williamson has fully completed all actions required pursuant to Section V;
- B. D.D. Williamson has paid the entire civil penalty, and any stipulated penalties, interest and charges due under Sections VII and IX of this Consent Decree;
- C. D.D. Williamson has certified compliance with all terms of this Consent Decree to the United States and to the Court as is stated below:

I certify that I am familiar with all the compliance requirements set out in the D.D. Williamson Consent Decree and that, based on my inquiry of those individuals directly responsible for carrying out each of the Consent Decree requirements, D.D. Williamson has remained in compliance with the Consent Decree for a period of at least 24 consecutive months, and this information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. See 18 U.S.C. § 1001.

and

- D. EPA within 60 Days of receiving D.D. Williamson's certification under subparagraph C. of this Paragraph has not contested that certification.

If the United States disputes D.D. Williamson's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XIX. PUBLIC PARTICIPATION

112. This Consent Decree will 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 the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. D.D. Williamson consents to the entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

113. Each undersigned representative of D.D. Williamson, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the District certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

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

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

116. D.D. Williamson hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

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

XXII. FINAL JUDGMENT


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

IT IS SO ORDERED this _____ Day of _____, 2009.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. D.D. Williamson & Co., Inc.,

FOR PLAINTIFF UNITED STATES OF AMERICA:


ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Date: 7/22/2009

ESPERANZA ANDERSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4059

Date: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. D.D. Williamson & Co., Inc.,

Date: _____

MARY J. WILKES
Regional Counsel
Region 4
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8909

Date: _____

ELLEN ROUCH
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8909

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. D.D. Williamson & Co., Inc.,

FOR THE LOUISVILLE METRO AIR POLLUTION CONTROL DISTRICT:

LAUREN ANDERSON
Executive Director
Louisville Metro Air Pollution Control District
850 Barret Avenue, Suite 200
Louisville, Kentucky 40204-1745

Date: _____

TERRI E. PHELPS
Enforcement Manager
Louisville Metro Air Pollution Control District
850 Barret Avenue, Suite 200
Louisville, Kentucky 40204-1745

Date: _____

STACY FRITZE DOTT
Assistant County Attorney
Louisville Metro Air Pollution Control District
850 Barret Avenue, Suite 200
Louisville, Kentucky 40204-1745

Date: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States v. D.D. Williamson & Co., Inc.,

FOR D.D. WILLIAMSON & CO., INC.:

Date: 7-10-09

THEODORE H. NIXON
Chairman and Chief Executive Officer
D.D. Williamson & Co., Inc.
100 S. Spring Street
Louisville, KY 40206

SERVICE AGENT'S ADDRESS

Date: 7-10-09

THEODORE H. NIXON
Chairman and Chief Executive Officer
D.D. Williamson & Co., Inc.
100 S. Spring Street
Louisville, KY 40206