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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )  
14 v. )  
15 COSTCO WHOLESALE )  
16 CORPORATION, )  
17 Defendant. )

Case No.  
COMPLAINT

1 The United States of America, by authority of the Attorney General of the United States  
2 and through the undersigned attorneys, acting at the request of the Administrator of the United  
3 States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

4 STATEMENT OF THE CASE

5 1. This is a civil action brought pursuant to the Clean Air Act (“CAA” or the “Act”),  
6 42 U.S.C. §§ 7401-7671q, against Defendant Costco Wholesale Corporation (“Defendant”) for  
7 civil penalties and injunctive relief for violations of Section 608 of the Act, 42 U.S.C. § 7671g,  
8 and the commercial refrigerant repair and recordkeeping regulations promulgated thereunder, set  
9 forth at 40 C.F.R. Part 82, Subpart F, §§ 82.150-82.169 (Recycling and Emission Reduction).

10 JURISDICTION AND VENUE

11 2. This Court has jurisdiction over the subject matter of this action pursuant to  
12 Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

13 3. Venue is proper in this district pursuant to Section 113(b) of the Act, 42 U.S.C. §  
14 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the violations in this  
15 Complaint are alleged to have occurred in this judicial district.

16 INTRADISTRICT ASSIGNMENT

17 4. Intradistrict assignment is proper in the San Francisco Division or the Oakland  
18 Division pursuant to Civil L.R. 3-2 because some of the violations in this Complaint are alleged  
19 to have occurred in the counties of San Francisco, San Mateo, or Contra Costa.

20 NOTICE AND AUTHORITY

21 5. The United States Department of Justice (“DOJ”) has authority to bring this  
22 action on behalf of the Administrator of EPA pursuant to 28 U.S.C. §§ 516 and 519, and Section  
23 305(a) of the Act, 42 U.S.C. § 7605(a).

24 6. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), notice of the  
25 commencement of this action has been given to the air pollution control agency for each state in  
26 which the violations in this Complaint are alleged to have occurred.

DEFENDANT

1  
2 7. Defendant, a Washington corporation with its headquarters in Issaquah,  
3 Washington, is a “person” as that term is defined at Section 302(e) of the Act, 42 U.S.C.  
4 § 7602(e), and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the  
5 Act, 42 U.S.C. § 7413.

6 8. Defendant is a membership warehouse business that engages in the sale of name-  
7 brand and private-label merchandise to members, and uses commercial refrigeration equipment  
8 to chill its food display cases.

STATUTORY AND REGULATORY BACKGROUND

9  
10 9. Title VI of the Act, 42 U.S.C. §§ 7671-7671q (Stratospheric Ozone Protection),  
11 which implements the Montreal Protocol on Substances That Deplete the Ozone Layer, mandates  
12 the elimination or control of emissions of substances that are known or suspected to cause or  
13 significantly contribute to harmful effects on the stratospheric ozone layer, referred to as class I  
14 and class II substances.

15 10. Section 608 of Title VI of the Act, 42 U.S.C. § 7671g (National Recycling and  
16 Emission Reduction Program), requires EPA to promulgate regulations establishing standards  
17 and requirements regarding the use and disposal of class I and class II substances during the  
18 service, repair, or disposal of appliances and industrial process refrigeration.

19 11. EPA promulgated the regulations required by Section 608 at 58 Fed. Reg. 28,660  
20 (May 14, 1993), as amended at 59 Fed. Reg. 42,950 (Aug. 19, 1994), 59 Fed. Reg. 55,912 (Nov.  
21 9, 1994), 60 Fed. Reg. 40,420 (Aug. 8, 1995), 68 Fed. Reg. 43,786 (July 24, 2003), 69 Fed. Reg.  
22 11,946 (Mar. 12, 2004), and 70 Fed. Reg. 1972 (Jan. 11, 2005). These regulations (“Subpart F  
23 Regulations”) are codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150-82.169.

24 A. Leak Repair Requirements

25 12. The Subpart F Regulations include leak repair requirements for commercial  
26 refrigeration appliances normally containing more than 50 pounds of refrigerant – i.e.,  
27 appliances containing more than 50 pounds of a substance consisting in part or whole of a class I  
28 or class II ozone-depleting substance when they are operating with a full charge of refrigerant.

1 40 C.F.R. §§ 82.156(i)(1), 82.152.

2 13. “Appliance” is defined in Title VI of the Act and the Subpart F Regulations as  
3 any device which contains and uses a class I or class II substance as a refrigerant and which is  
4 used for household or commercial purposes, including any air conditioner, refrigerator, chiller,  
5 or freezer. CAA § 601(1), 42 U.S.C. § 7671(1); 40 C.F.R. § 82.152.

6 14. “Commercial refrigeration” is defined in the Subpart F Regulations as the  
7 refrigeration appliances utilized in the retail food and cold storage warehouse sectors, including  
8 the refrigeration equipment found in supermarkets. 40 C.F.R. § 82.152.

9 15. Pursuant to the Subpart F Regulations, if a commercial refrigeration appliance  
10 that normally contains more than 50 pounds of refrigerant has an annual leak rate in excess of 35  
11 percent, the owner or operator of such appliance must, within 30 days after the owner or operator  
12 discovers a leak, or should have discovered a leak if the owner or operator intentionally shielded  
13 itself from information that would have revealed a leak, either: (a) repair the leak, bringing the  
14 annual leak rate below 35 percent, or (b) prepare a one-year retrofit or retirement plan for the  
15 leaking appliance, and complete all work in accordance with the plan within one year of the  
16 plan’s date. 40 C.F.R. § 82.156(i)(1), (6), (9).

17 B. Recordkeeping Requirements

18 16. To ensure that owners and operators can determine when they must take action  
19 under the leak repair requirements, the Subpart F Regulations also impose recordkeeping  
20 requirements for commercial refrigeration appliances normally containing 50 or more pounds of  
21 refrigerant.

22 17. Pursuant to 40 C.F.R. § 82.166(k) and (m), the owner or operator of a commercial  
23 refrigeration appliance normally containing 50 or more pounds of refrigerant must keep records  
24 documenting the date and type of service on the appliance, as well as the quantity of refrigerant  
25 added, and must maintain such records for at least three years.

26 C. Enforcement Provisions

27 18. Sections 113(a)(3)(C) and 113(b)(2) of the Act, 42 U.S.C. §§ 7413(a)(3)(C) and  
28 7413(b)(2), authorize the Administrator to bring a civil action against any person in federal

1 district court where such person has violated any requirement of, *inter alia*, Title VI of the Act,  
2 including a requirement of any rule promulgated thereunder.

3 19. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the assessment of civil  
4 penalties not to exceed \$25,000 per day for each violation of Title VI of the Act. Pursuant to the  
5 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by  
6 the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701 note, the United States may  
7 seek civil penalties of up to \$27,500 per day for each violation occurring on or after January 31,  
8 1997. Pursuant to EPA's 2004 and 2008 Civil Monetary Penalty Inflation Adjustment Rules, the  
9 United States may seek civil penalties of up to \$32,500 per day for each violation occurring on  
10 or after March 16, 2004, and civil penalties of up to \$37,500 per day for each violation occurring  
11 on or after January 13, 2009. 40 C.F.R. Part 19.

#### 12 GENERAL ALLEGATIONS

13 20. Defendant owns or operates commercial refrigeration appliances at many of its  
14 membership warehouses in the United States.

15 21. Defendant's commercial refrigeration appliances are "appliances" within the  
16 meaning of Section 601(1) of the Act, 42 U.S.C. § 7671(1), and 40 C.F.R. § 82.152, and  
17 "commercial refrigeration" equipment within the meaning of 40 C.F.R. § 82.152.

18 22. Defendant employs a class I or class II substance (refrigerant) in its commercial  
19 refrigeration appliances.

20 23. Each of Defendant's commercial refrigeration appliances normally contains 50 or  
21 more pounds of refrigerant.

22 24. On November 1, 2007, EPA issued an information request to Defendant pursuant  
23 to Section 114(a) of the Act, 42 U.S.C. § 7414(a), regarding the repair of leaks from commercial  
24 refrigeration appliances containing and using a class I or class II substance as a refrigerant. EPA  
25 subsequently narrowed the request to cover 45 warehouses in California, Arizona, Nevada, and  
26 Hawaii.

27 25. On or about January 17, 2008, and March 11, 2008, Defendant submitted its  
28 responses to EPA's information request, including approximately 25,000 pages of equipment

1 records.

2 26. Based on EPA's analysis of the information contained in Defendant's responses,  
3 the United States alleges the following violations of the Subpart F Regulations.

4 FIRST CLAIM FOR RELIEF

5 Failure to Repair Leaking Appliances, 40 C.F.R. § 82.156(i)(1), (9)

6 27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

7 28. With respect to one or more commercial refrigeration appliances at some or all of  
8 its warehouses in the United States with such appliances, Defendant discovered a refrigerant leak  
9 (or, subject to a reasonable opportunity for further investigation or discovery, should have  
10 discovered a refrigerant leak after intentionally shielding itself from information that would have  
11 revealed a leak) at a time when such appliance had an annual leak rate in excess of 35 percent,  
12 and failed to repair the leak within 30 days of discovery to bring the annual leak rate to below 35  
13 percent, without preparing a one-year plan for retrofit or retirement for the appliance, in violation  
14 of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(1) and (9).

15 29. Subject to a reasonable opportunity for further investigation or discovery, some of  
16 the violations alleged in Paragraph 28 have not been corrected and will continue in the future.

17 30. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set  
18 forth above subject Defendant to injunctive relief and a civil penalty of up to \$32,500 per day for  
19 each violation occurring on or after March 16, 2004, and up to \$37,500 per day for each  
20 violation occurring on or after January 13, 2009.

21 SECOND CLAIM FOR RELIEF

22 Failure to Prepare and Implement Retrofit or Retirement Plans, 40 C.F.R. § 82.156(i)(6)

23 31. Paragraphs 1 through 26 and 28 are realleged and incorporated herein by  
24 reference.

25 32. With respect to one or more commercial refrigeration appliances at some or all of  
26 its warehouses in the United States with such appliances, Defendant discovered a refrigerant leak  
27 (or, subject to a reasonable opportunity for further investigation or discovery, should have  
28 discovered a refrigerant leak after intentionally shielding itself from information that would have

1 revealed a leak) at a time when such appliance had an annual leak rate in excess of 35 percent,  
2 and failed to prepare and implement a one-year retrofit or retirement plan for the appliance  
3 within 30 days of discovery, in violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40  
4 C.F.R. § 82.156(i)(6).

5 33. Subject to a reasonable opportunity for further investigation or discovery, some of  
6 the violations alleged in Paragraph 32 have not been corrected and will continue in the future.

7 34. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set  
8 forth above subject Defendant to injunctive relief and a civil penalty of up to \$32,500 per day for  
9 each violation occurring on or after March 16, 2004, and up to \$37,500 per day for each  
10 violation occurring on or after January 13, 2009.

### 11 THIRD CLAIM FOR RELIEF

#### 12 Failure to Maintain Adequate Servicing Records, 40 C.F.R. § 82.166(k), (m)

13 35. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

14 36. At some or all of its warehouses in the United States with commercial refrigerant  
15 appliances, Defendant failed to keep servicing records documenting the date and type of service  
16 to commercial refrigeration appliances, as well as the quantity of refrigerant added to such  
17 appliances, and/or failed to maintain such servicing records for a minimum of three years, in  
18 violation of Section 608 of the Act, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) and (m).

19 37. Subject to a reasonable opportunity for further investigation or discovery, some of  
20 the violations alleged in Paragraph 36 have not been corrected and will continue in the future.

21 38. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set  
22 forth above subject Defendant to injunctive relief and a civil penalty of up to \$32,500 per day for  
23 each violation occurring on or after March 16, 2004, and up to \$37,500 per day for each  
24 violation occurring on or after January 13, 2009.

### 25 PRAYER FOR RELIEF

26 WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

27 1. Order Defendant to take appropriate action to remedy and prevent violations of  
28 Section 608 of the Act, 42 U.S.C. § 7671g, and the regulations promulgated thereunder, 40

1 C.F.R. Part 82, Subpart F, at its warehouses, including steps to mitigate emissions associated  
2 with the violations alleged above;

3 2. Assess civil penalties against Defendant of not more than \$32,500 per violation  
4 for each violation occurring on or after March 16, 2004, and not more than \$37,500 per violation  
5 for each violation occurring on or after January 13, 2009;

6 3. Award the United States its costs and expenses incurred in this action; and

7 4. Grant such other relief as this Court deems just and proper.

8  
9 Respectfully submitted,

10 THE UNITED STATES OF AMERICA

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