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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270

25 JAN 18 PM 3: 52
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Wonderful Citrus Packing LLC,
D.B.A. Rio Grande Juice Company

Respondent.

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Docket No. CAA-06-2023-3319

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Wonderful Citrus Packing LLC, D.B.A. Rio Grande Juice Company (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent violated of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the

CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34 of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Wonderful Citrus Packing LLC, D.B.A. Rio Grande Juice Company, a company in the state of Texas and conducting business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements

for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the

Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$55,808 for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3)

of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent is the owner and operator of a facility located at: 702 E. Interstate Hwy 2, Mission, TX 78572 (the “Facility”).

21. On March 21, 2022, there was an incident at the Facility that resulted in an accidental release (the “Incident”). Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA requested, and Respondent provided, documentation and information concerning the Incident and Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Investigation”).

22. On August 8, 2022, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On August 19, 2022, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

24. The primary business of Respondent is processing and storage of citrus products. In order to conduct operations, the facility maintains two refrigeration systems containing a maximum of 18,800 pounds of ammonia, a regulated substance. Therefore, the Facility meets the definition of "process", as defined by 40 C.F.R. § 68.3.

25. Ammonia is a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for Ammonia, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

26. Respondent has greater than a threshold quantity of Ammonia, in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of Ammonia in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of Ammonia in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because pursuant to 40 C.F.R.

§ 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 325311.

EPA Findings of Violation

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Process Hazard Analysis

31. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall establish a system to promptly address the process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

32. Respondent failed to promptly address action items from its 2017 Process Hazard Analysis (PHA). There were six (6) open items from the 2017 PHA with due dates scheduled in 2017 and 2018, making some action items nearly 5 years old. Respondent subsequently resolved three (3) of the six (6) open items. Additionally, EPA acknowledged that the only remaining open item related to System 1 was the name plates.

33. Respondent's failure to promptly address the PHA's findings and recommendations,

assure that the recommendations were resolved in a timely manner, and complete actions as soon as possible pursuant to 40 C.F.R. § 68.67(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Operating Procedures

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(a)(1)(ii), the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address steps for normal operations. Pursuant to 40 C.F.R. § 68.69(c) the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. Additionally, the owner or operator shall certify annually that these operating procedures are current and accurate.

35. Respondent failed to develop operating procedures specific to a potential Ammonia release from the Not from Concentrate Silos and relevant to the opening of the manual valve prior to transferring juice from the silos to other processes. Respondent also failed to annually certify juice operator standard operating procedures (SOPs).

36. Respondent's failure to develop operating procedure specific to the Not from Concentrate Silos and relevant to the opening of the manual valve prior to transferring juice from the silos to other processes pursuant to 40 C.F.R. § 68.69(c), and Respondent's failure to certify juice operator SOPs, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Mechanical Integrity

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(d)(4), the owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

38. Respondent failed to document mechanical integrity inspections on equipment for years 2018, 2019, 2020, and 2021.

39. Respondent's failure to document mechanical integrity inspections on equipment for years 2018, 2019, 2020, and 2021 pursuant to 40 C.F.R. § 68.73(d)(4), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Mechanical Integrity

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(e), the owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner, when necessary, means are taken to assure safe operation.

41. Respondent failed to correct deficiencies in process equipment before further use. Specifically, recommendations resulting from the 2021 Mechanical Integrity Audit

Recommendation Report identified mechanical integrity issues with process equipment. The Facility's response to four of those recommendations is that the equipment will be removed as part of a decommissioning schedule for the summer of 2023, asserting that it took measures to ensure the process equipment continued to operate safely while awaiting decommissioning. However, the mechanical integrity issues have not been addressed as the process equipment continues to operate.

42. Respondent's failure to correct deficiencies in process equipment before further use pursuant to 40 C.F.R. § 68.73(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Emergency Response Coordination Activities

43. Pursuant to 40 C.F.R. § 68.93(a), coordination shall occur at least annually, and more frequently, if necessary, to address changes: At the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan. Pursuant to 40 C.F.R. § 68.93(c), the owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

44. Respondent failed to provide evidence and the appropriate documentation of emergency response coordination activities for years 2018, 2019, and 2021.

45. Respondent's failure to provide evidence and appropriated documentation of emergency response coordination activities for years 2018, 2019, and 2021 pursuant to 40 C.F.R. § 68.93(a) & (c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

46. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- e. consents to the issuance of any specified compliance or corrective action order;
- f. consents to any conditions specified herein;
- g. consents to any stated Permit Action;
- h. waives any right to contest the allegations set forth herein; and
- i. waives its rights to appeal the Final Order accompanying this Consent Agreement.

47. Respondent consents to the issuance of this Consent Agreement and Final Order (CAFO) and consents for the purposes of settlement to the payment of the civil penalty specified herein.

48. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

49. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-seven thousand and two hundred dollars (\$27,200), as set forth below.

50. Respondent shall pay the penalty within sixty (60) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be

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by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

51. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
Vaughn.Lorena@epa.gov; and

Carlos Flores
Enforcement and Compliance Assurance Division
Air Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
Flores.Carlos@epa.gov

52. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains

delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

53. In response to the alleged violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and in settlement of this matter, although not required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) or any other federal, state, or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below.

54. Respondent shall undertake an emergency planning and preparedness SEP which the parties agree is intended to secure significant environmental or public health protection and improvement. Respondent worked with a local fire department that responds to emergencies in the area of the Rio Grande facility to develop the SEP. The SEP involves purchasing and donating emergency response equipment to the Mission Fire Department (“MFD”), located at 415 West Tom Landry Street, Mission, Texas 78572. The equipment to be purchased and Respondent’s costs of performing the SEP are described in more detail in Attachment A to this Consent Agreement and Final Order.

55. Respondent shall spend no less than one hundred and one thousand dollars (\$101,000) on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent’s implementation of the SEP as described in Attachment A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment. Respondent will identify, purchase, and provide additional emergency response equipment to MFD.

56. Respondent shall complete the SEP no later than twelve (12) months from the effective date of this CAFO.

57. SEP Recipient

- a. Respondent has selected Mission Fire Department to receive traditional firefighting equipment, cutting edge technology, and specialized response equipment that will support emergency response coordination and improve life safety during industrial incidents.
- b. The EPA had no role in the selection of any SEP recipient or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP recipient or specific equipment identified in this CAFO.

58. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of 112(r) of the CAA, 42 U.S.C. § 7412(r), by allowing the MFD to be better prepared and respond more effectively to incidents involving chemicals and other hazardous materials. The SEP is not inconsistent with any provision of 112(r) of the CAA, 42 U.S.C. § 7412(r). The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and/or the environment potentially affected by the alleged violations. Specifically, the donation of this equipment that covers traditional firefighting equipment, cutting edge technology, and specialized response equipment will support emergency response coordination and improve life safety during industrial incidents. The drone uses a combination of regular and thermal imaging cameras. The camera that uses thermal imaging, which can be used to help find separated firefighters and identify hot spots. The drone will allow firefighters to look at dangerous areas without exposing personnel to immediate danger. The ammonia detector will allow firefighters to detect ammonia concentrations and ensure rescue

personnel are not exposed to lethal levels of anhydrous ammonia. The additional HAZMAT gear consists of spill prevention and control measures, PPE, and weather monitoring equipment to help assess dangers to the surrounding areas in the event of a hazardous material spill or release. The remaining equipment will support unique rescue situations and training on such situations. The technical rescue equipment includes specialized tools that can be used in responding to industrial incidents and conducting confined space and high angle rescue. Specifically, the donation of this equipment that covers traditional firefighting equipment, cutting edge technology, and specialized response equipment will support emergency response coordination and improve life safety during industrial incidents. Specifically, the donation of this equipment that covers traditional firefighting equipment, cutting edge technology, and specialized response equipment will support emergency response coordination and improve life safety during industrial incidents. The drone uses a combination of regular and thermal imaging cameras. The camera that uses thermal imaging, which can be used to help find separated firefighters and identify hot spots. The drone will allow firefighters to look at dangerous areas without exposing personnel to immediate danger. The ammonia detector will allow firefighters to detect ammonia concentrations and ensure rescue personnel are not exposed to lethal levels of anhydrous ammonia. The additional HAZMAT gear consists of spill prevention and control measures, PPE, and weather monitoring equipment to help assess dangers to the surrounding areas in the event of a hazardous material spill or release. The remaining equipment will support unique rescue situations and training on such situations. The technical rescue equipment includes specialized tools that can be used in responding to industrial incidents and conducting confined space and high angle rescue.

59. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP, exclusive of administrative costs, employee oversight of the implementation of the SEP is one hundred and one thousand dollars (\$101,000);
- b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- d. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph

60. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO

from the date of its execution of this CAFO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws.”

61. SEP Reports

- a. Respondent shall submit a SEP Completion Report to EPA by April 30, 2024. The SEP (Completion) Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsection (a) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 65 below.
- c. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs

must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

62. Stipulated Penalties

- a. Except as provided in subparagraph (b) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in paragraph 58 by the deadline in Paragraph 61 Respondent agrees to pay, in addition to the civil penalty in Paragraph 49, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:
 - i. \$500 per day for days 1-15
 - ii. \$1,000 per day for days 16 – 30
 - iii. \$2,500 per day for days 31 and beyond.
- b. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth above, Respondent shall pay a stipulated penalty to the United States in the amount of one hundred and eleven thousand and one hundred dollars (\$111,100). “Satisfactory completion” of the SEP is defined as Respondent spending no less than one hundred and one thousand dollars (\$101,000) for the donation equipment that covers traditional firefighting equipment, cutting edge technology, and specialized response equipment will support emergency response coordination and improve life safety during

industrial incidents by April 30, 2024. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

- c. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 50 above. Interest and late charges shall be paid as stated in paragraph 52.

Modification

63. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer. However, the Regional Judicial Officer need not approve written agreements between the parties modifying the specified emergency response equipment in Attachment B and written agreements between the parties modifying for good cause the SEP completion date of April 30, 2024. The Director of Operations shall sign the written agreements that do not require Regional Judicial Officer approval and said written agreements shall be filed with the Regional Hearing Clerk.

Effect of Settlement and Reservation of Rights

64. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

65. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in

paragraph directly below.

66. Respondent certifies by the signing of this Consent Agreement that it is presently to the best of its knowledge in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

67. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

68. Complainant reserves the right to enforce the terms and conditions of this CAFO.

General Provisions

69. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

70. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This CAFO shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

71. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

72. This CAFO shall apply to and be binding upon Respondent and Respondent's agents,

*In the Matter of Wonderful Citrus Packing LLC, D.B.A. Rio Grande Juice Company
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successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

73. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this CAFO by email to the following:

To EPA: *Henley.Hollis@epa.gov*

To Respondent: *Justin.Simpson@wonderful.com. With a copy to:*

Melissa.Frank@wonderful.com

Robyn.Neely@akerman.com

*In the Matter of Wonderful Citrus Packing LLC, D.B.A. Rio Grande Juice Company
Docket No. CAA-06-2023-3319*

**RESPONDENT:
RIO GRANDE JUICE COMPANY**

5/16/2023

Date: _____

DocuSigned by:
Craig Cooper
DC271ACBF6564F8...

Craig Cooper, Esquire
General Counsel
Wonderful Citrus

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2023.05.18 14:30:25
-05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Henley.Hollis@epa.gov

Copy via Email to Respondent:

Justin.Simpson@wonderful.com
Melissa.Frank@wonderful.com
Robyn.Neely@akerman.com

Copy via Email to Regional Hearing Clerk:

Vaughn.Lorena@epa.gov

**LORI
JACKSON**

Digitally signed by LORI JACKSON
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=LORI JACKSON,
0.9.2342.19200300.100.1.1=68001003655539
Date: 2023.05.19 10:21:39 -05'00'

Signed
Office of Regional Counsel
U.S. EPA, Region 6