

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**\*\* FILED \*\*  
09 FEB 2021  
U.S. EPA - REGION IX**

**IN THE MATTER OF:**

GreenGate Fresh, LLLP  
1222 Merrill Street  
Salinas, California 93901

Respondent

**Docket No.**  
CAA(112r)-09-2021-0020

**CONSENT AGREEMENT  
AND FINAL ORDER  
40 C.F.R. §§ 22.13 and 22.18**

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is GreenGate Fresh, LLLP (“Respondent”).

2. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

**B. GENERAL ALLEGATIONS**

3. Respondent owns and operates a facility located at 1222 Merrill Street, Salinas, California 93901 (“Facility”).

4. On July 23, 2019, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.
5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
6. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.
7. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
8. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to EPA Regional Administrators pursuant to delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, re delegated this authority with respect to enforcement of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Enforcement Division, Region IX, pursuant to delegation R9-7-6-A, dated February 11, 2013.

9. In a letter dated November 3, 2020, the United States Department of Justice granted EPA a waiver from the condition on administrative actions specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

10. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

12. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

13. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility that has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

14. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

15. At all times relevant to this CA/FO, Respondent produced, used or stored 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

**C. ALLEGED VIOLATIONS**

**COUNT I**

**(Failure to Comply with the Process Safety Information Requirement to Compile Information Pertaining to the Technology of the Process)**

16. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

17. 40 C.F.R. § 68.65(a) requires that owners or operators complete a compilation of written process safety information before conducting the process hazard analysis.

18. 40 C.F.R. § 68.65(c)(1) requires information pertaining to the technology of the process, including at least the following: a block flow diagram or simplified process flow diagram; process chemistry; maximum intended inventory; safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and, an evaluation of the consequences of deviations.

19. EPA determined that Respondent's process safety information inaccurately reflected the technology of the process at the Facility. The Safe Operating Limits and Consequences of Deviation included some equipment not on site – reciprocating compressors.

20. By failing to comply with the process safety information requirement to compile information pertaining to the technology of the process, Respondent violated 40 C.F.R. § 68.65.

**COUNT II**

**(Failure to Comply with Process Safety Information Requirement Related to Recognized and Generally Acceptable Good Engineering Practices)**

21. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

22. 40 C.F.R. § 68.65(a) requires that owners or operators complete a compilation of written process safety information before conducting the process hazard analysis.

23. 40 C.F.R. § 68.65(d)(2) requires that owners and operators shall document that equipment in the process complies with recognized and generally accepted good engineering practices (“RAGAGEP”). EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers’ requirements and recommendations.

24. EPA determined there was inadequate and inconsistent labeling of process piping and equipment throughout the Facility, which was not in accordance with RAGAGEP, including Section 5.14.5 of ANSI/IIAR 2-2014 (all piping mains, headers and branches shall be identified with certain information, including “AMMONIA,” physical state of the ammonia, relative pressure of ammonia, pipe service, and direction of flow, with a marking system that shall either be one established by a recognized model code or standard or one described and documented by the facility), Section 3.1 of ASME A13.1-2015 (positive identification of the contents of piping systems shall be by lettered legend, giving the name of the contents in full or abbreviated form; arrows shall be used to indicate direction of flow; contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard), and Section 4.7.6 of IIAR Bulletin 109 (all ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components).

25. EPA determined that open-ended lines lacked plugs or caps on the low-pressure relief (“LPR”) oil pot drain line and the LPR safety access service port, which was not in accordance

with RAGAGEP, including Section 11.6.1 of ANSI/ASHRAE 13-2013 (valves connecting refrigerant containing parts to atmosphere during shipping, testing, operating, servicing or standby conditions shall be capped, plugged, blanked, or locked closed when not in use), Section 10.4.5.4 of ANSI/IIAR 4-2015 (shut-off (stop) valves connecting refrigerant-containing parts to atmosphere shall be capped, plugged, blanked, or locked closed during shipping, testing, operating, servicing, or standby conditions if they are used).

26. EPA determined three ammonia piping lines were “deadlegs” terminating approximately 12 feet above ground, which presented potential locations for liquid ammonia accumulation, expansion, and possible release, and which was inconsistent with RAGAGEP, including IIAR Bulletin 110, § 3.5 (particular care shall be taken to ensure liquid ammonia is not trapped in pipelines or fittings between shut-off devices).

27. EPA determined that the Facility’s documentation lacked detailed steps to shut down the refrigeration system in the event of an emergency, a piping and inspection diagram of the system with critical valves marked, the name and telephone numbers of the refrigeration operating and maintenance staff and emergency responders, or the names and telephone numbers of all corporate, local, state, and federal agencies to be contacted in the event of a reportable incident posted in or around the Refrigeration Equipment Yard, which was inconsistent with RAGAGEP, including Section 11.7 of ANSI/ASHRAE 15-2016 (duty to provide a schematic drawing or panel giving directions for the operation of a system at a location that is convenient to the operators of the equipment; emergency shutdown procedures, including precautions to be observed in case of a breakdown or leak, shall be displayed on a conspicuous card located as near as possible to the refrigerant compressor) and Section 5.15 of ANSI/IIAR 2-2014 (duty to provide directions for

the emergency shutdown of the system at a location that is readily accessible to trained refrigeration staff and trained emergency responders; specifies what shall be included in schematic drawings or signage).

28. EPA determined that fencing around the Refrigeration Equipment Yard did not have the National Fire Protection Association (NFPA) diamond to indicate the presence of ammonia, nor signage to indicate restricted to authorized personnel, which was inconsistent with RAGAGEP, including Section 6.15.1 of ANSI/IIAR 2-2014 (buildings and facilities with refrigeration systems shall be provided with placards in accordance with NFPA 704 and the Mechanical Code), and Section 7.2.2 of ANSI/IIAR 2-2014 (access to the refrigeration equipment shall be restricted to authorized personnel).

29. EPA determined that evaporators and piping in the Raw Product Room and Shipping Dock within the Facility lack adequate physical protection from equipment, such as forklifts, inconsistent with RAGAGEP, including California Fire Code § 5003.9.3 (formerly § 2703.9.3) (protection from vehicles: guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing areas; and use areas subject to vehicular damage), 8 California Code of Regulations § 3248 (mechanical refrigeration systems placed into service on or after March 13, 1999, but before January 1, 2008, shall be designed, installed, tested, and maintained in accordance with Section 1105.5 of the 1997 Uniform Mechanical Code, which provides refrigeration systems and portions thereof shall not be located in a location where it will be subject to mechanical damage), ANSI/IIAR 2-2014 § 7.2.4 (physical protection: equipment shall be protected where a risk of physical damage exists; where equipment containing ammonia is located in an area with heavy vehicular traffic during normal operations

and a risk of impact exists, vehicle barriers or alternative protection shall be provided in accordance with the Fire Code), ANSI/ASHRAE 2015-2016 § 11.1 (means shall be taken to adequately safeguard piping, controls, and other refrigerating equipment to minimize possible accidental damage or rupture by external sources), and ANSI/IIAR 9-2020 § 7.2.12.1 (protection from physical damage: where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided).

30. By failing to comply with the process safety information requirement to document that equipment in the process complies with RAGAGEP, Respondent violated 40 C.F.R. § 68.65.

**COUNT III**  
**(Failure to Comply with Process Hazard Analysis Requirements)**

31. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

32. 40 C.F.R. § 68.67(e) requires that the owner or operator shall establish a system to promptly address the Process Hazard Analysis (PHA) 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.

33. EPA determined that the Facility's 2019 PHA lacked an established system to promptly address findings and recommendations where items assigned "Future Consideration" were not completed as soon as possible.



34. By failing to comply with process hazard analysis requirements, Respondent violated 40 C.F.R. § 68.67.

**COUNT IV**

**(Failure to Comply with Operating Procedure Requirement to Develop and Implement Clear Instructions for Safely Conducting Activities)**

35. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

36. 40 C.F.R. § 68.69(a) requires that owners or operators 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 certain elements including safety and health considerations: properties of, and hazards presented by, the chemicals used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; control measures to be taken if physical contact or airborne exposure occurs; quality control for raw materials and control of hazardous chemical inventory levels; and, any special or unique hazards.

37. EPA determined that many of Respondent's standard operating procedures (SOPs) did not consistently address safety and health considerations (e.g., properties and hazards presented by ammonia, personal protective equipment requirements, special or unique hazards, and safety systems).

38. EPA determined that Respondent's SOPs did not provide clear instructions for safely operating the refrigeration system. Specifically, Respondent referred to SOP 22 internally as the "Yuma Facility Seasonal Pumpdown" procedure, which potentially introduces confusion concerning whether this SOP is applicable to the Facility (which is in Salinas, California). In

addition, SOP 22 directs operators to “Isolate the KING VALVE and flag,” but the SOP references both the LPR and the high pressure receiver (HPR), both of which have King Valves. The HPR is also equipped with two King Valves.

39. By failing to comply with the operating procedures requirement to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process, Respondent violated 40 C.F.R. § 68.69(a).

**COUNT V**

**(Failure to Comply with Requirement to Review Operating Procedures as Often as Necessary to Assure That They Reflect Current Operating Practice)**

40. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

41. 40 C.F.R. § 68.69(c) requires that the written 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.

42. EPA determined that Respondent failed to review its written operating procedures to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment; Respondent’s operating procedures referred to a compressor that was no longer in use.

43. By failing to comply with the requirement to review written operating procedures as often as necessary to reflect current operating practice, Respondent violated 40 C.F.R. § 68.69(c).

**COUNT VI**

**(Failure to Comply with the Mechanical Integrity Inspection and Testing Requirement)**

44. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.73(d) sets forth mechanical integrity requirements, including the requirement that inspection and testing shall be performed on process equipment, the inspecting and testing procedures shall follow RAGAGEP, the frequency of inspections and tests of process equipment shall be consistent with RAGAGEP and more frequently if determined to be necessary by prior operating experience, and requires that the owner or operator shall document each inspection and test has been performed on process equipment, among other requirements.

46. EPA determined that Respondent failed to comply with RAGAGEPs concerning inspection and testing procedures, including Section 5.2 of IIAR Bulletin 109 (each owner to ensure an ammonia system safety check is conducted annually) and Section 6.4.4.1 of IIAR Bulletin 110 (the annual inspection must be carried out by a competent person independent of immediate commercial and production pressures for that installation). Based on the incomplete five-year mechanical integrity inspection checklists, lack of annual mechanical integrity / safety inspection results, and observations in the field for piping and tanks that contained corrosion, EPA determined that mechanical integrity inspections and testing have not been done following practices and at frequencies consistent with RAGAGEP.

47. By failing to comply with the mechanical integrity inspection and testing requirement, Respondent violated 40 C.F.R. § 68.73(d).

**COUNT VII**

**(Failure to Comply with Emergency Response Program Requirements – Emergency Response Plan)**

48. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

40 C.F.R. § 68.95(a) requires that the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment, and that the program must include an emergency response plan, which shall be maintained at the stationary source and contain at least the following elements: (i) procedures for informing the public and the appropriate Federal, state, and local emergency response agencies about accidental releases; (ii) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and (iii) procedures and measures for emergency response after an accidental release of a regulated substance.

49. EPA determined that Respondent had not developed and implemented an emergency response plan reflecting the operations at the Facility; the emergency response plan was missing several sections (e.g., blank in sections regarding different types of alarms, corporate notifications procedures, description of fire alarm, location of alarm panel, description of hazardous material alarm) and referred to an ERP-6 form for response to personnel injuries although this form is not provided as part of the emergency response plan.

50. By failing to comply with the emergency response plan requirement, Respondent violated 40 C.F.R. § 68.95(a).

**COUNT VIII**

**(Failure to Comply with General Duty Clause Requirement to Design and Maintain a Safe Facility, Taking Such Steps As Are Necessary to Prevent Release)**

51. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

52. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), sets forth the General Duty Clause, including the requirement that owners and operators of stationary sources must design and maintain a safe facility, taking such steps as are necessary to prevent releases.

53. EPA determined that Respondent's Facility was missing NFPA diamonds in the bulk sanitation chemical storage area to indicate the presence of potential hazards as required by Section 4.3 of NFPA 704 (signs shall be in locations approved by the authority having jurisdiction and at a minimum shall be posted at the following locations: two exterior walls or enclosures containing a means of access to a building or facility; each access to a room or area; and each principal means of access to an exterior storage area).

54. By failing to comply with the requirement to design and maintain a safe facility, taking such steps as are necessary to prevent a release, Respondent violated the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**D. CIVIL PENALTY**

55. Respondent submitted a signed certification, dated December 28, 2020, under penalty of law that COVID-19 negatively impacted the financial health of the Respondent and that EIGHTY-THOUSAND DOLLARS (\$80,000) is the highest penalty amount Respondent can afford to pay as a penalty in this matter ("COVID-19 certification"). EPA is relying on Respondent's COVID-19 certification to determine Respondent's ability to pay a penalty. Any

false statement made in Respondent's COVID-19 certification may result in voiding the penalty portion of this settlement.

56. The penalty amount herein of EIGHTY-THOUSAND DOLLARS (\$80,000) was determined consistent with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), which provides for consideration of the economic impact of the penalty on the business, among other penalty assessment criteria, and is consistent with EPA policy.

**E. ADMISSIONS AND WAIVERS OF RIGHTS**

57. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

58. For the purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations and to appeal the proposed Final Order accompanying this Consent Agreement and made part of this CA/FO. Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

59. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

**F. PARTIES BOUND**

60. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D has been paid, the compliance task required under Section G has been completed, and any delays in performance and/or stipulated penalties have been resolved.

61. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

62. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

63. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

**G. COMPLIANCE TASK**

64. All submissions to EPA in this section shall be in writing and submitted to Donald Nixon at EPA at [nixon.donald@epa.gov](mailto:nixon.donald@epa.gov).

65. Respondent shall install cages (barricading) consistent with a June 2, 2020 work description,<sup>1</sup> inside the Raw Product Room and Shipping Dock at the Facility, to protect

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<sup>1</sup> **Evaporator Coil Cages Work to Include:**

- Remove +/- 80 roof panels, clean and set aside for reinstall after work completed
- Remove and set aside existing ceiling lights
- Fire sprinkler heads to be removed and capped by "others"
- Layout for new coil cage vertical penetration spots on ceiling
- Drill 8" holes for new 6" x 6" tube penetrations through ceiling
- Layout and drill for new cradles to attach to Glu-Lam's and where cages will

evaporators and any associated piping that could be exposed to forklifts or other related machinery or vehicles. Specifically, these barriers will be installed around the following evaporators: FC-1, FC-2, FC-3, FC-4, FC-5, FC-12, FC-13, FC-14, FC-15, FC-16, FC-17, FC-18; and any associated piping that could be exposed to forklifts or other related machinery or vehicles, in accordance with the following substantive standard under ANSI/IIAR 9-2020 § 7.2.12.1: “**Protection from Physical Damage.** Where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided.” EPA is relying on Respondent’s certification, dated January 7, 2021, attested to under penalty of law, which states that regarding the following evaporators at no time are forklifts or other related machinery or vehicles ever within 10 feet of the evaporators, with the exception of those required for maintenance on the evaporators or related equipment: FC-6, FC-7, FC-8, FC-9, FC-10, FC-11.

66. Respondent shall complete the compliance task by April 15, 2021. The compliance task must be completed during the Facility’s off-season, while the Facility is shut down. If Respondent is unable to complete the compliance task by this deadline, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.

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attach to concrete walls

- Supply and place new wood braces, blocking, brackets and hangers to rafters and Glu-Lam per plan
- Supply and hang new 6” x 6” stainless steel verticals from Glu-Lams and attach with 4 bolts per cradle per plan
- Supply and place new 5” x 5” and 3” x 3” stainless steel braces per plan and weld in place
- Cap bottoms of 6” x 6” with 3/16” stainless steel plate and weld
- Replace previously removed ceiling panels and caulk back in place, add foam and reattach any trim removed
- Re install previously removed ceiling lights



67. Monthly Progress Reports. Within 30 days of the Effective Date of the CA/FO, and every 30-days thereafter until completion of the compliance task, Respondent shall submit a written progress report to EPA ("Progress Report"). Each Progress Report shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

68. Respondent consents to the issuance of any specified compliance or corrective action order.

#### **H. PAYMENT OF CIVIL PENALTY**

69. Respondent consents to the assessment of and agrees to pay civil penalties of **EIGHTY-THOUSAND DOLLARS (\$80,000.00)**, in settlement of the civil penalty claims made in this CA/FO.

70. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO having been approved and issued by the Regional Judicial Officer is filed with the Regional Hearing Clerk.

71. All payments shall indicate the name of the Facility, EPA Facility identifier (FRS 110057112556), the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency  
Government Lock Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: Craig Steffen (513-487-2091)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006

Environmental Protection Agency

CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:

[www.pav.gov](http://www.pav.gov)

Enter "**SFO 1.1**" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent via electronic mail with a transmittal letter indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
R9HearingClerk@epa.gov

and

Don Nixon  
Enforcement Division  
U.S. Environmental Protection Agency - Region 9  
Nixon.Donald@epa.gov

72. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

73. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

**I. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

74. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

75. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

76. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

77. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

78. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

**J. RESERVATION OF RIGHTS**

79. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO

shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

80. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

81. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

82. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

**K. MISCELLANEOUS**

83. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

84. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

85. Each party to this action shall bear its own costs and attorneys' fees.

86. Respondent consents to entry of this CA/FO without further notice.

**L. EFFECTIVE DATE**

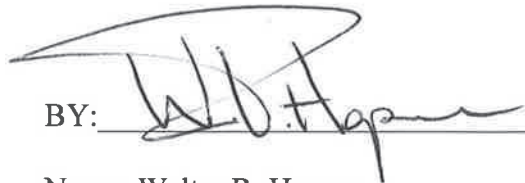
87. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of GreenGate Fresh LLLP  
Consent Agreement and Final Order

Respondent GreenGate Fresh LLLP

DATE: 1-7-2021

BY:  \_\_\_\_\_

Name: Walter R. Hepner

Title: Vice President of Operations



United States Environmental Protection Agency, Region 9

DATE: \_\_\_\_\_

BY: **AMY MILLER-  
BOWEN**  
\_\_\_\_\_  
Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division

 Digitally signed by AMY MILLER-  
BOWEN  
Date: 2021.01.27 17:51:43 -08'00'

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (“CA/FO”) in the Matter of GreenGate Fresh, LLLP (Docket No. CAA(112r)-09-2021-0020) be entered and that Respondent shall pay a civil penalty of **EIGHTY-THOUSAND DOLLARS (\$80,000.00)**, and implement the compliance task described in Section G, in accordance with all terms and conditions of this CA/FO.

**STEVEN JAWGIEL** Digitally signed by STEVEN  
JAWGIEL  
Date: 2021.02.09 10:26:38 -08'00'

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Date

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *GreenGate Fresh, LLLP (CAA(112r)-09-2021-0020)*, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk as indicated below:

By Electronic Mail:

Respondent -

Mr. Robert Gleim  
Senior Maintenance/Facilities Manager  
Green Gate Fresh, LLLP, Salinas  
1222 Merrill Street  
Salinas, California 93901  
Robert.Gleim@greengatefresh.com

Complainant -

Jon Owens, Esq.  
Office of Regional Counsel  
ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, California 94105  
Owens.Jon@epa.gov

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven Armsey  
Regional Hearing Clerk  
EPA, Region 9