UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Rick Pitman
Owner
Pitman Farms, Inc.
1489 K Street
Sanger, CA 93657

FEB 0 2 2017

Subject: Consent Agreement and Final Order, Settlement of CAA § 112(r), CERCLA § 103 and EPCRA § 304 Violations at the Pitman Farms, Inc. Facility in Sanger, CA

Dear Mr. Pitman:

Please find enclosed the fully executed Consent Agreement and Final Order negotiated between the United States Environmental Protection Agency, Region IX, and Pitman Farms, Inc. concerning its facility located in Sanger, California. The CA/FO simultaneously commences and concludes proceedings concerning violations at the facility of 1) the Risk Management Program contained in the regulations at 40 C.F.R. Part 68, promulgated pursuant to Clean Air Act Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 2) the release notification requirements under Section 304 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603.

If you have any questions regarding the CAA, EPCRA, or CERCLA requirements applicable to the facility, or concerning the proceedings terminated by the enclosed documents, please contact Mr. Jeremy Johnstone of my staff at (415) 972-3499 or at johnstone.jeremy@epa.gov.

Sincerely,

Enrique Manzanilla, Director
Superfund Division

Enclosure

cc (via email, with enclosure):
J. Johnstone, U.S. EPA
M. Gallo, U.S. EPA
L. Smith, Esq.
V. Mendes, Fresno County CUPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
BEFORE THE ADMINISTRATOR

In the Matter of:

Pitman Farms, Inc.,

Respondent.

U.S. EPA Docket Nos.
CAA(112r)-09-2017-00 01
EPCRA(304)-09-2017-00 01
CERCLA(103)-09-2017-00 01

CONSENT AGREEMENT AND FINAL ORDER PURSUANT TO 40 CFR §§ 22.13 AND 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 CFR Part 22.

2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA, CERCLA, and EPCRA. Delegation 7-6-A, dated August 4, 1994 (CAA); Delegation 14-31,

dated May 11, 1994 (CERCLA); Delegation 22-3-A, dated July 20, 2016 (EPCRA). The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Superfund Division. Regional Delegation R9-7-6-A, dated February 11, 2013 (CAA); Regional Delegation R9-1290.16, dated September 29, 1997 (CERCLA); Regional Delegation R9-22-3-A, dated February 11, 2013 (EPCRA). On EPA's behalf, the Director of the Superfund Division for Region IX is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

3. Respondent is Pitman Farms, Inc., a corporation doing business in the state of California.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order"). Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and the Consolidated Rules, 40 CFR Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A) of the CAA, Section 103 of CERCLA, and Section 304 of EPCRA.

6. EPA and the United States Department of Justice jointly determined that this matter, although it involves a penalty assessment above $320,000 and alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an

administrative penalty assessment. 42 U.S.C. § 7413(d); 40 CFR § 19.4.

7. The Regional Judicial Officer is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 CFR § 22.4(b), 22.18(b).

8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 CFR § 22.13(b).

C. GOVERNING LAW

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA is authorized to promulgate regulations for accidental release prevention.

10. Pursuant to Sections 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) & (r)(7), EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (r)(5), the list of regulated substances and threshold levels is codified at 40 CFR § 68.130.

11. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable threshold quantity in a

"process," as defined in 40 CFR § 68.3, must develop a Risk Management Program accidental release prevention program and submit and implement a Risk Management Plan to EPA.

12. Anhydrous ammonia is a regulated substance pursuant to Sections 112(r)(2) and (3) of the CAA, 42 U.S.C. §§ 7412(r)(2) & (3), and 40 CFR § 68.3. The threshold quantity for regulation of anhydrous ammonia, as listed in 40 CFR § 68.130, Tables 1 and 2, is 10,000 pounds.

13. CERCLA Section 103(a), 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined in the statute at Section 101(9), 42 U.S.C. § 9601(9), to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity ("RQ").

14. Section 304 of EPCRA, 42 U.S.C. § 11004, requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to immediately notify the appropriate governmental entities of any release that requires notification under Section 103 of CERCLA, and of any release in an amount that meets or exceeds the RQ of an Extremely Hazardous Substance listed under Section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the designated state emergency planning commission ("SERC") for each state likely to be affected by the release.

15. Ammonia is a "hazardous substance" as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and it is also an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3). The RQ for ammonia for both CERCLA and EPCRA, as listed in 40 CFR Part 302, Table 302.4, and 40 CFR Part 355, Appendix A, is one hundred (100) pounds.

D. FACTS

16. Respondent, a California corporation, is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. Respondent owns and operates a poultry processing facility ("Facility"), located at 1489 K Street, Sanger, California.

18. The Facility is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C). The Facility is also a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. At all times referred to herein, Respondent was the "owner or operator" of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

20. The Facility includes an ammonia refrigeration system, which, at the time of this Consent Agreement, provides refrigerating capacity to one cooler, two freezers, a staging area, an air chill room, and two processing rooms ("New System"). Prior to the reconstruction which was finished on August 15, 2016, the Facility included an ammonia refrigeration system, which provided refrigerating capacity to a cooler, a turkey room, a cut up room, an air chill room, four freezer rooms, one shell and tube water chiller, and an ice maker ("Old System"). All of the areas in the Old System are now cooled by the New System.

21. The New System at the Facility is considered to be a single process because it consists of vessels that are interconnected.

22. The Old System at the Facility was considered to be a single process because it also consisted of vessels that were interconnected.

23. Respondent handles, stores, and uses, and previously handled, stored, and used, anhydrous ammonia in both the New System and the Old System at the Facility.

24. Respondent filed a Risk Management Plan ("RMP") for the Old System at its Facility with EPA on or about January 14, 2013, which identified the ammonia refrigeration system as a Program 3 covered process and specified a quantity of 18,000 pounds of anhydrous ammonia for the process.

25. On September 23, 2014, there was an accidental release of approximately 2,700 pounds of anhydrous ammonia from the Facility. As a result of this release, thirty-four (34) Facility employees were treated onsite and fifteen (15) Facility employees were transferred to local hospitals. No one was permanently injured.

26. Immediately after the September 23, 2014, ammonia release, an employee of Respondent donned protective gear, climbed onto the roof, and applied water to the anhydrous ammonia, which was escaping through a relief valve discharge termination pipe and had pooled on the machinery room roof.

27. At the time of this release, Respondent did not have an emergency response plan complying with the requirements of 40 CFR § 68.95. Instead, Respondent had identified itself as being "non-responding" in its RMP submittal to EPA. Respondent's document entitled "Emergency Response Program," dated January 2, 2013, states that, in the event of an emergency, Respondent will evacuate its employees and will not permit any of its employees to assist in handling the emergency.

28. The release of 2,700 pounds of anhydrous ammonia on September 23, 2014, occurred at 6:45 am, and Respondent reported the release to the NRC on September 23, 2014, at 7:44 am.

29. The release of 2,700 pounds of anhydrous ammonia on September 23, 2014, occurred at 6:45 am, and Respondent provided notice of the release to the California Office of Emergency Services on September 23, 2014, at 7:53 am.

30. On May 2, 2016, there was an accidental release of approximately 1,538 pounds of anhydrous ammonia from the Facility. As a result of this release, four (4) Facility employees were transferred to local hospitals, where they were treated and released. No one was permanently injured.

31. On July 24, 2016, there was an accidental release of approximately 187 pounds of anhydrous ammonia from the Facility. As a result of this release, four (4) Facility employees were transferred to local hospitals, where they were treated and released. No one was permanently injured.

32. The release of 187 pounds of anhydrous ammonia on July 24, 2016, occurred at 11:15 pm, and Respondent reported the release to the NRC on July 24, 2016, at 11:46 pm.

33. The release of 187 pounds of anhydrous ammonia on July 24, 2016, occurred at 11:15 pm, and Respondent provided notice of the release to the California Office of Emergency Services, which functions as the SERC in California, on July 24, 2016, at 11:54 pm.

34. EPA conducted an inspection of the Facility on November 25, 2014, to evaluate compliance with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 CFR Part 68.

35. As part of the inspection, EPA requested, and Respondent provided, certain records and documents, including supporting documentation demonstrating compliance with 40 CFR Part 68 at the Facility.

36. At the time of EPA's inspection, Respondent could not document that all of the equipment complied with recognized and generally accepted good engineering practices. The Old System's pipes and valves lacked labeling, in contradiction to the American National Standards Institute/American Society of Mechanical Engineers standard no. A13.1.2007 "Standard for the Identification of Pipes" and the International Institute of Ammonia Refrigeration ("IIAR") Bulletin 114 (2014) "Guidelines for Identification of Ammonia Refrigeration Piping and System Components," which specify requirements for the labeling and other identification of ammonia refrigeration system piping and other componentry. Respondent could not provide evidence that the pipes had ever been labeled.

37. At the time of EPA's inspection, Respondent could not document that all of the equipment complied with recognized and generally accepted good engineering practices. Entries to the Old System's engine room were not marked in a manner to limit entry to authorized personnel, and one of the doors to the processing area opened inward instead of outward, in contradiction to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE") 15-2013, "Safety Standard for Refrigeration Systems," which specifies that access to the refrigerating machinery room shall be restricted to authorized personnel, doors shall be clearly marked or permanent signs shall be posted at each entrance to indicate this restriction, and engine room doors shall open outward. Respondent could not provide evidence of prior compliance with these engineering practices.

38. At the time of EPA's inspection, Respondent could not document that all of the equipment complied with recognized and generally accepted good engineering practices. The termination of the relief header manifold was at a two-foot height above the roof line and in a horizontal alignment, in contradiction to ASHRAE 15-2013, which specifies that ammonia relief systems discharge at least fifteen feet above an adjacent work surface and directed upward so as not to potentially expose anyone to a discharge. Respondent could not provide evidence of prior compliance with these engineering practices.

39. The operating procedures effective at the time of EPA's inspection were created for Respondent by its consultant, Resource Compliance Inc., and were initially reviewed and accepted by Respondent on September 13, 2012. Respondent's files document an operating procedure review and recertification on July 31, 2014, but Respondent could not provide evidence of any review having been conducted between the date of initial acceptance and the July 2014 review.

40. At the time of EPA's inspection, Respondent could not provide evidence that it had prepared a record demonstrating that employees had received and understood training in operating procedures related to the process prior to October 8, 2014.

41. At the time of EPA's inspection, Respondent could not provide evidence that the employees had engaged in respirator fit testing prior to January 15, 2015, for the two employees who are designated to perform oil draining operations, for which Respondent's operating procedure requires the use of air purifying respirators.

42. At the time of EPA's inspection, Respondent could not provide evidence of any inspections, testing, and preventive maintenance of the high-level float for Intercooler IC-1 prior to the September 23, 2014, ammonia release incident.

43. At the time of EPA's inspection, Respondent could not provide evidence of annual inspections conforming with IIAR Bulletin 109, "Guidelines for Minimum Safety Criteria for a Safe Ammonia Refrigeration System," prior to October 2014.

44. At the time of EPA's inspection, Respondent provided the report from a mechanical integrity audit performed by Respondent's consultant, Resource Compliance Inc., in accordance with IIAR Bulletin 110, "Guidelines for Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems," dated October/November 2014. The report from this mechanical integrity audit identified a total of 49 instances of non-compliance with codes and/or issues "in need of attention to preserve the remaining integrity of a piece of equipment and or to improve safety, operability and maintenance." At the time of EPA's inspection, Respondent could not provide evidence that all of these deficiencies had been corrected. Respondent later certified to EPA that all of these deficiencies were corrected by August 15, 2016 at the latest.

45. At the time of EPA's inspection, Respondent could not provide management of change documentation associated with the replacement of Compressor #5 approximately two years prior to the inspection. Respondent's documents indicated that the new Compressor #5 was not connected to the logic control system, which was identified as a contributing factor to the September 23, 2014, release.

46. At the time of EPA's inspection, Respondent provided documentation of a compliance audit dated January 2013, but could not provide documentation of any compliance audits conducted prior to that time.

47. At the time of EPA's inspection, Respondent provided documentation that four of the seven findings and recommendations in the incident investigation report of the September 23,

2014, ammonia release incident had been promptly addressed and resolved. Respondent later provided documentation showing that the remaining three findings and recommendations were addressed and resolved by December 22, 2014.

48. Respondent represented to EPA during the Facility inspection that it was planning to upgrade and replace the Old System with the New System.

49. Respondent and EPA entered into an Administrative Compliance Order on Consent on June 6, 2016, requiring Respondent to take interim steps to achieve compliance with applicable regulations or, at a minimum, to make the Facility safer until the New System could replace the Old System.

50. The Old System was fully decommissioned on August 15, 2016.

51. Respondent filed a revised Risk Management Plan for the New System at its Facility with EPA on or about August 16, 2016, which identified the ammonia refrigeration system as a Program 3 covered process and specified a quantity of 39,000 pounds of anhydrous ammonia for the process.

E. ALLEGED VIOLATIONS OF LAW

52. Based on the facts above, EPA alleges that Respondent has violated Section 103 of CERCLA, Section 304 of EPCRA, Section 112(r)(7) of the CAA, and the codified rules of 40 CFR Part 68, governing the CAA's Chemical Accident Prevention Provisions, as follows:

Count I

(First Failure to Immediately Notify the NRC of a Release of an RQ of Anhydrous Ammonia)

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

54. On September 23, 2014, Respondent's facility released an RQ of anhydrous ammonia. Respondent had actual or constructive knowledge of the anhydrous ammonia release at 6:45 a.m., but Respondent failed to notify the NRC until 7:44 a.m.

55. By failing to immediately notify the NRC as soon as it had knowledge of the release of an RQ of anhydrous ammonia on September 23, 2014, Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603.

Count II

(First Failure to Immediately Notify the SERC of a Release of an RQ of Anhydrous Ammonia)

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

57. On September 23, 2014, Respondent's facility released an RQ of anhydrous ammonia, Respondent had actual or constructive knowledge of the anhydrous ammonia release at 6:45 a.m., but Respondent failed to notify the California Office of Emergency Services, which functions as the SERC in California, until 7:53 am.

58. By failing to immediately notify the California Office of Emergency Services as soon as it had knowledge of the release of an RQ of anhydrous ammonia on September 23, 2014, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

Count III

(Second Failure to Immediately Notify the NRC of a Release of an RQ of Anhydrous Ammonia)

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

60. On July 24, 2016, Respondent's facility released an RQ of anhydrous ammonia. Respondent had actual or constructive knowledge of the anhydrous ammonia release at 11:15 p.m., but Respondent failed to notify the NRC until 11:46 p.m.

61. By failing to immediately notify the NRC as soon as it had knowledge of the release of an RQ of anhydrous ammonia on July 24, 2016, Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603.

Count IV

(Second Failure to Immediately Notify the SERC of a Release of an RQ of Anhydrous Ammonia)

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

63. On July 24, 2016, Respondent's facility released an RQ of anhydrous ammonia. Respondent had actual or constructive knowledge of the anhydrous ammonia release at 11:15 p.m., but Respondent failed to notify the California Office of Emergency Services until 11:54 p.m.

64. By failing to immediately notify the California Office of Emergency Services as soon as it had knowledge of the release of an RQ of anhydrous ammonia on July 24, 2016, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

Count V

(Failure to Document that Process Equipment Complies with Recognized and Generally Accepted Good Engineering Practices)

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

66. 40 CFR § 68.65(d)(2) requires that the owner or operator document that process equipment complies with recognized and generally accepted good engineering practices.

67. The American National Standards Institute and American Society of Mechanical Engineers standard no. A13.1.2007 "Standard for the Identification of Pipes" and IIAR Bulletin 114 (2014) "Guidelines for Identification of Ammonia Refrigeration Piping and System Components" specify requirements for the labeling and other identification of ammonia refrigeration system piping and other componentry.

68. ASHRAE 15-2013 "Safety Standard for Refrigeration Systems" specifies that access to a refrigeration machinery room be restricted to authorized personnel, that the doors to the room be clearly marked to indicate the restriction, and that the doors from the machinery room open outward.

69. ASHRAE 15-2013 "Safety Standard for Refrigeration Systems" specifies that ammonia relief systems discharge at least fifteen feet above an adjacent work surface and be directed upward so as not to potentially expose anyone to a discharge.

70. Based on EPA's inspection and information gathered during EPA's investigation, the Facility's ammonia refrigeration system pipes were not labeled prior to December 31, 2015.

71. Based on EPA's inspection and information gathered during EPA's investigation, the refrigeration machinery room was not restricted to authorized personnel and the doors were not clearly marked prior to February 2015, and the doors from the machinery room opened inward until that part of the Facility was decommissioned August 15, 2016.

72. Based on EPA's inspection and information gathered during EPA's investigation, the termination of the ammonia relief system discharge was at a two-foot height above the roof

line and in a horizontal alignment until this part of the Facility was decommissioned August 15, 2016.

73. By failing to label ammonia refrigeration system pipes, restrict access and mark machinery room doors, ensure that machinery room doors opened outward, and ensure that the ammonia relief system discharged at an appropriate height and direction, Respondent failed to document that process equipment complies with recognized and generally accepted good engineering practices, and therefore Respondent violated 40 CFR § 68.65(d)(2).

Count VI

(Failure to Certify Operating Procedures Annually)

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

75. 40 CFR § 68.69(c) requires an owner or operator to certify annually that its operating procedures are current and accurate.

76. Respondent's consultant created operating procedures that Respondent reviewed and accepted on September 13, 2012, but Respondent did not review and recertify the operating procedures until July 31, 2014, a gap of approximately twenty-two months.

77. By failing to certify the operating procedures annually, Respondent violated 40 CFR § 68.69(c).

Count VII

(Failure to Ascertain and Record Employee Training)

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

79. 40 CFR § 68.71(c) requires an owner or operator to ascertain and record that each employee involved in operating a process has received and understood initial training and refresher trainings.

80. Based on EPA's inspection and information gathered during EPA's investigation, there are no records that indicate employees received and understood initial and regular refresher trainings in operating procedures related to the process prior to October 8, 2014.

81. Respondent's operating procedures for oil draining operations require the use of air purifying respirators.

82. Based on information gathered during EPA's investigation, the employees designated to perform oil draining operations had not been tested for respirator fit prior to January 15, 2015.

83. By failing to ascertain and record that each employee received and understood the trainings, Respondent violated 40 CFR § 68.71(c).

Count VIII

(Failure to Perform and Document Inspections and Tests)

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

85. 40 CFR § 68.73(d) requires that inspections and tests be performed and documented on process equipment at a frequency consistent with applicable manufacturers' recommendations and good engineering practices.

86. IIAR Bulletin 109 provides guidelines for annual inspections of ammonia refrigeration systems.

87. Respondent did not conduct any annual inspections conforming with IIAR Bulletin 109 prior to October 2014.

88. Respondent did not conduct any inspection, testing, and preventive maintenance of the high-level float for Intercooler IC-1 prior to September 23, 2014.

89. By failing to conduct annual inspections and inspection, testing, and preventive maintenance of the high-level float, Respondent violated 40 CFR § 68.73(d).

Count IX

(Failure to Correct Deficiencies in Equipment Outside Acceptable Limits)

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

91. 40 CFR § 68.73(e) requires the owner or operator to 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.

92. Respondent's consultant conducted a Mechanical Integrity Audit pursuant to IIAR Bulletin 110, "Guidelines for Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems," in October/November 2014.

93. The Mechanical Integrity Audit report identified forty-nine instances of non-compliance with codes and/or issues in need of attention to preserve integrity of equipment or to improve safety, operability and maintenance. Respondent did not complete addressing all of the instances noted in the report until the Old System was decommissioned August 15, 2016.

94. By failing to correct deficiencies in equipment that are outside of acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation, Respondent violated 40 CFR § 68.73(e).

Count X

(Failure to Implement Management of Change Procedure)

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

96. 40 CFR § 68.75(a) requires an owner or operator to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and operating procedures.

97. Approximately two years prior to EPA's inspection, Respondent replaced Compressor #5, but Respondent did not document the management of this change or connect the new compressor to the logic control system.

98. By failing to implement its written procedures to manage changes when replacing Compressor #5, Respondent violated 40 CFR § 68.75(a).

Count XI

(Failure to Retain Compliance Audit Reports)

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

100. 40 CFR § 68.79(e) requires an owner or operator to retain the two most recent compliance audit reports, which are to be conducted at least every three years.

101. At the time of EPA's inspection, Respondent provided a compliance audit dated January 2013, but was unable to furnish documentation of any compliance audits conducted prior to that time.

102. By failing to retain the two most recent compliance audit reports, Respondent violated 40 CFR § 68.75(a).

Count XII

(Failure to Promptly Address and Resolve Findings after Incident)

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

104. 40 CFR § 68.81(e) requires an owner or operator to establish a system to promptly address and resolve findings and recommendations made in an incident investigation report of an incident which resulted in a catastrophic release of a regulated substance.

105. Respondent investigated the September 23, 2014, release of anhydrous ammonia and produced a report dated September 30, 2014.

106. Respondent's incident investigation report recommended that seven corrective actions be taken on or before October 10, 2014, but Respondent had not taken four of the corrective actions at the time of EPA's inspection on November 25, 2014, and based on EPA's investigation, the corrective actions were not completed until December 22, 2014.

107. By failing to promptly address and resolve the findings and recommendations contained in the incident investigation report of the September 23, 2014, ammonia release incident, Respondent violated 40 CFR § 68.81(e).

Count XIII

(Failure to Develop and Implement Emergency Response Program)

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

109. 40 CFR § 68.90 provides an owner or operator a choice to either develop and implement an emergency response program in order to respond to accidental releases of regulated substances or to decide that its employees will not respond to accidental releases of regulated substances.

110. 40 CFR § 68.95 sets forth the requirements of an emergency response program that must be in place before employees may respond to accidental releases of regulated substances, including an emergency response plan, procedures for the use of emergency response equipment and for its inspection, testing, and maintenance, training for all employees, and procedures to review and update the emergency response plan.

111. Respondent did not develop and implement an emergency response program, but a Facility employee performed response activities during the September 23, 2014, release, when the employee donned protective gear, climbed onto the roof, and applied water to the anhydrous ammonia, which was escaping through a relief valve discharge termination pipe and had pooled on the machinery room roof.

112. By failing to develop and implement an emergency response program as required of a facility whose employees respond to accidental releases of regulated substances, Respondent violated 40 CFR § 68.95(a).

F. TERMS OF CONSENT AGREEMENT

113. For the purpose of this proceeding, as required by 40 CFR § 22.18(b)(2), Respondent:

(a) admits that EPA has jurisdiction over the subject matter alleged in this Agreement;

(b) neither admits nor denies the alleged violations or related allegations of fact or law set forth in Sections D and E of this Agreement;

(c) consents to the assessment of a civil penalty as stated below;

(d) consents to the conditions, including the performance of Supplemental Environmental Projects, specified in this Agreement;

(e) subject to Subparagraph 113(b) above, waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

(f) waives its rights to appeal the Order accompanying this Agreement.

114. For the purpose of this proceeding, Respondent:

(a) agrees that this Agreement alleges claims upon which relief may be granted against Respondent;

(b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

(c) subject to Subparagraph 113(b) above, waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement or Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4), Section 109(a)(4) of CERCLA, 42 U.S.C. § 9609(a)(4), or Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1);

(d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Eastern District of California; and

(e) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this Agreement or Order, or both, and the authority to seek additional penalties for such noncompliance, and agrees that federal law shall govern in any such civil action.

115. Civil Penalties. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, all as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR Part 19, authorize civil penalties of up to thirty-seven thousand five hundred dollars ($37,500) per day for each day a violation of Section 112(r) of the CAA, Section 304 of EPCRA, or Section 103 of CERCLA occurs on or after January 13, 2009, up to $44,539 per day for each day a violation of Section 112(r) of the CAA occurs on or after November 2, 2015, and up to $53,907 per day for each day a violation of Section 304 of EPCRA or Section 103 of CERCLA occurs on or after November 2, 2015. See Tables 1 & 2 of 40 CFR § 19.4.

(a) Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 CFR Part 68 ("CEP"), dated June 2012, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay TWO HUNDRED SIXTEEN THOUSAND, NINE HUNDRED SIXTY-

THREE DOLLARS ($216,963) as the civil penalty for the CAA violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

(b) Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA ("ERP"), dated September 30, 1999, including the nature, extent, and gravity of the violations, the respondent's ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay TWELVE THOUSAND, FIVE HUNDRED NINETY-ONE DOLLARS ($12,591) as the civil penalty for the EPCRA violations alleged herein, and an additional THIRTEEN THOUSAND, FOUR HUNDRED TWENTY-SIX DOLLARS ($13,426) as the civil penalty for the CERCLA violations alleged herein. The proposed penalties were calculated in accordance with the ERP.

116. Payment of Penalties. Respondent agrees to:

(a) pay civil penalties totaling $242,980 ("EPA Penalties") within 30 calendar days of the Effective Date of this Agreement.

(b) pay these EPA Penalties in two separate payments, as follows:

i. The payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket numbers of this action.

ii. The payment of Clean Air Act and Emergency Planning and Community Right-to-Know Act penalties in the amount of $229,554 shall be made by

corporate, certified, or cashier's check payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Govt Lockbox 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

iii.

iv. The payment of Comprehensive Environmental Response, Compensation, and Liability Act penalty in the amount of $13,426 shall be made by corporate, certified, or cashier's check payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Govt Lockbox 979076
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Copies of both checks and accompanying information shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket numbers, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Jeremy Johnstone (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

117. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

(a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

(b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 CFR §§ 13.13, 13.14, and 13.33;

(c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 CFR Part 13, Subparts C and H;

(d) suspend or revoke Respondent's federal licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 CFR § 13.17; and

(e) assess stipulated penalties pursuant to Section I of this Order.

118. Supplemental Environmental Projects. As a condition of settlement, Respondent shall perform the specified supplemental environmental projects ("SEPs") to enhance the emergency response capabilities of the Fresno County Hazmat Emergency Response Team and to improve the ability to prevent, detect, and respond to accidental releases at the Facility. Performance of the tasks detailed in this Paragraph shall constitute satisfactory performance of the SEPs, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

(a) The Fresno County Hazmat Emergency Response Team provides, among other things, hazardous materials ("hazmat") response services to the City of Sanger, California. In developing this SEP, Respondent contacted the Fresno County Hazmat Emergency Response Team and inquired whether it could utilize emergency planning and preparedness assistance to better plan for and respond to spills or releases. In response to this inquiry, the Fresno County Hazmat Emergency Response Team requested that Respondent purchase certain equipment to improve the Fresno County Hazmat Emergency Response Team's ability to provide response services by identifying and monitoring chemicals and other hazardous materials in the field, which will be needed for emergency planning and preparedness.

(b) The City of Fresno Fire Department has two Type 1 Hazmat response teams that provide, among other things, hazmat response services to the City of Sanger, California through mutual aid agreements. The Fresno County Hazmat Emergency Response Team requested that Respondent purchase certain protective HAZMAT equipment to improve the City of Fresno Fire Department's ability to respond to chemical spills throughout Fresno County, including those potentially in Sanger.

(c) Emergency Response Equipment SEP. Within ninety (90) days of the Effective Date of this Agreement:

i. Respondent shall purchase and make delivery of one (1) Smith's Detection Hazmat Elite Package, which is a chemical identification system with a chemical library, to the Fresno County Hazmat Emergency Response Team;

ii. Respondent shall purchase and make delivery of one (1) TruDefender Hand Held FTIR Spectrometer, which provides rapid, field-based identification of unknown chemicals including explosives, to the Fresno County Hazmat Emergency Response Team; and

iii. Respondent shall purchase as many Kappler Model F5H580912X3X Level A suits as can be purchased for TWENTY THOUSAND DOLLARS ($20,000), and shall make delivery of the suits to the City of Fresno Fire Department. The particular quantity of each size of the suits, which are estimated to cost $600-850 each, to be purchased shall be agreed to by both Respondent and the City of Fresno Fire Department.

(d) Respondent shall use all reasonable efforts to provide equipment to the Fresno County Hazmat Emergency Response Team and the City of Fresno Fire Department as described above, but may substitute equipment that supports emergency planning and preparedness that is similar in total cost to the equipment described above with the consent of the Fresno County Hazmat Emergency Response Team or the City of Fresno Fire Department, respectively. Any substitutions changing the total amount spent are subject to Paragraphs 143 and 144.

(e) Centralized Control System SEP. Respondent shall also conduct a SEP to install additional centralized safety controls by connecting those portions of the Old System that are continued in use to the New System's centralized controls in order to remotely prevent, detect, and control releases of anhydrous ammonia, as described in ColdStorage Technologies' proposal entitled "Add Old Plant Controls to New System Proposal – Version 2," dated August 25, 2016. Respondent may use a contractor or consultant to implement the Centralized Control System SEP, and Respondent shall ensure that its management of change procedures are followed and implemented with respect to this change. Respondent shall install and be operating the additional centralized safety controls within one hundred twelve (112) days of the Effective Date of this Agreement.

(f) Respondent shall expend at least ONE HUNDRED NINETY FOUR THOUSAND, NINE HUNDRED FIFTY DOLLARS ($194,950) to complete the SEPs described herein, subject to Paragraphs 143 and 144.

(g) Within one hundred thirty (130) days of the Effective Date of the Agreement, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of all of the SEPs as implemented with an accounting showing the amount Respondent expended for the implementation of the SEPs and substantiating documentation, including but not limited to (i) invoices, purchase orders, checks or receipts, and correspondence with the Fresno County Hazmat Emergency Response Team and City of Fresno Fire Department; (ii) invoices, purchase orders, checks or receipts and management of change documentation related to implementation of the Centralized Control System SEP; (iii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the projects; and (iv) certification that the projects have been fully implemented pursuant to the provisions of the Agreement, as described in further detail below.

(h) In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The Interim and Final SEP Completion Reports shall be submitted via hard copy or electronic mail to:

Jeremy Johnstone (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

johnstone.jeremy@epa.gov

(i) Failure to complete the SEPs or submit the Interim and Final SEP Completion Reports required herein shall be deemed a violation of this Agreement and Respondent shall become liable for stipulated penalties pursuant to Section I below.

(j) Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Agreement for at least three (3) years, and Respondent shall provide the documentation of any such underlying research and data to EPA within fourteen (14) days of EPA's request for such information.

(k) With regard to the SEP, Respondent, by signing this Agreement, certifies the truth and accuracy of each of the following: (i) that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEPs is at least $194,950; (ii) that, as of the date of this Agreement, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum; (iii) that the SEPs are not projects that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Agreement; (iv) that Respondent has not received and will not receive credit for

the SEPs in any other enforcement action; (v) that Respondent will not receive reimbursement for any portion of the SEPs from another person or entity; (vi) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs; and (vii) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEPs described in this Agreement and has inquired of the Fresno County Hazmat Emergency Response Team and the City of Fresno Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the Fresno County Hazmat Emergency Response Team that to its knowledge it is not a party to such a transaction, and has been informed by the City of Fresno Fire Department that it is not a party to such a transaction.

(l) Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs under this Agreement from the date of Respondent's execution of this Agreement shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

119. Respondent agrees that the time period from the Effective Date of this Agreement until all of the SEPs specified in Paragraph 118 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section E of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer,

motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

120. The provisions of this Agreement shall apply to and be binding upon Respondent and its successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 119, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless EPA has provided written approval of the release of said obligations or liabilities.

121. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

122. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

123. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information. Respondent acknowledges that there

are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

124. Except as qualified by Paragraph 117, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. CERTIFICATION OF COMPLIANCE

125. By signing this Agreement, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 9412(r)(7), Section 103 of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, that formed the basis for the violations alleged in the Agreement, and the Facility is now in compliance with Section 112(r) of the CAA, 42 U.S.C. § 9412(r)(7), Section 103 of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

126. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

127. In accordance with 40 CFR § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

128. The penalties specified in this Agreement 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.

129. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof, with the exception of the Administrative Compliance Order on Consent issued on June 6, 2016.

130. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

131. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $44,539 per day per violation, or both, as provided in Section 109(a) of CERCLA, 42 U.S.C. § 7409(a), Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), and amended by 81 Fed. Reg. 43,091, 43,095 (July 1, 2016), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

132. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, CERCLA, EPCRA, and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. This Agreement is not intended to be, nor shall it be construed as, a permit. This Agreement does not relieve Respondent of any obligation to obtain and comply with any federal, tribal, state or local 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.

133. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

134. EPA expressly reserves all rights and defenses that it may have.

135. Respondent expressly reserves all rights and defenses that it may have except as expressly waived or compromised in this Agreement.

136. 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, except as it relates to those matters resolved 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, except as it relates to those matters resolved by this CA/FO.

137. 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.

138. 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.

139. EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

140. In the event Respondent fails to meet any requirement set forth in this Agreement, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this Agreement in a manner acceptable to EPA and within the specified time schedules in and approved under this Agreement.

141. For failure to submit a payment to EPA by the time required in this Agreement: 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.

142. In the event that Respondent fails to substantially conduct any or all of the SEPs in accordance with the terms of this Agreement, Respondent shall pay a stipulated penalty for each SEP not substantially conducted according to the following amounts, less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 145:

(a) For failure to purchase and deliver one (1) Smith's Detection Hazmat Elite Package within ninety (90) days of the Effective Date of this Agreement, a stipulated penalty of SEVENTY THOUSAND DOLLARS ($70,000);

(b) For failure to purchase and deliver one (1) TruDefender Hand Held FTIR Spectrometer within ninety (90) days of the Effective Date of this Agreement, a stipulated penalty of THIRTY SEVEN THOUSAND DOLLARS ($37,000);

(c) For failure to purchase and deliver as many Kappler Model F5H580912X3X Level A suits as can be purchased for $20,000 within ninety (90) days of the Effective Date of this Agreement, a stipulated penalty of TWENTY THREE THOUSAND, FIVE HUNDRED DOLLARS ($23,500).

(d) For failure to substantially conduct the SEP of additional centralized controls at the Facility within one hundred twelve (112) days of the Effective Date of this Agreement, a stipulated penalty of ONE HUNDRED THOUSAND DOLLARS ($100,000).

143. If Respondent demonstrates that the SEP tasks described in Subparagraph 118(c) and (e) were completed, but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Subparagraph 118(f), Respondent shall pay a stipulated penalty to the United States that is the difference between ONE HUNDRED NINETY FOUR THOUSAND, NINE HUNDRED FIFTY DOLLARS ($194,950) and the actual costs incurred by Respondent toward completion of the tasks described in Subparagraphs 118(c) and (e).

144. If Respondent fails to demonstrate that the SEP tasks in Subparagraphs 118(c) and (e) were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks; and (ii) certifies, with supporting documentation, that at least 90 percent of the costs that were required to be incurred pursuant to Subparagraph 118(f) were incurred for the SEP tasks described in Subparagraphs 118(c), Respondent shall not be liable for any stipulated penalty under this paragraph.

145. For failure to submit the SEP Completion Report required by Paragraphs 118(g) and (h), Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS ($500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document.

146. The determination of whether Respondent has satisfactorily complied with the terms of this Agreement and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this Agreement are within the sole discretion of the Director, Superfund Division, EPA Region IX.

147. 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 F of this Agreement.

148. 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 CFR § 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 Agreement or with the CAA and its implementing regulations.

149. 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.

150. 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 Agreement.

J. EFFECTIVE DATE

151. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Pitman Farms, Inc., Docket Nos. CAA(112r)-09-2017-00 , EPCRA(304)-09-2017-00 , and CERCLA(103)-09-2017-00 , is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature

January 14, 2017
Date

Printed Name: David Pitman

Title: Secretary / Treasurer

Address: 1075 North Ave. Sanger CA 93657

Respondent's Federal Tax Identification Number: 94-2227381

The foregoing Consent Agreement In the Matter of Pitman Farms, Inc., Docket Nos. CAA(112r)-09-2017-00 , EPCRA(304)-09-2017-00 , and CERCLA(103)-09-2017-00 , is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

31 JAN 17
DATE

Enrique Manzanilla, Director, Superfund Division
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket Nos. CAA(112r)-09-2017-0001, EPCRA(304)-09-2017-0001, and CERCLA(103)-09-2017-0001) be entered and that Respondent Pitman Farms, Inc. shall pay a civil penalty in the amount of TWO HUNDRED FORTY TWO THOUSAND, NINE HUNDRED EIGHTY DOLLARS ($242,980), due within thirty (30) days from the Effective date of this Consent Agreement and Final Order, and implement the Supplemental Environmental Projects described in Paragraph 118 in accordance with all terms and conditions of the Consent Agreement and Final Order.

THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING.

02/01/17
DATE

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket Nos. CAA(112r)-09-2017-0001
EPCRA(304)-09-2017-0001
CERCLA(103)-09-2017-0001

I hereby certify that the original copy of the Consent agreement & Final Order with the Docket numbers referenced above, have been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Rick Pitman, Owner
Pitman Farms, Inc.
1489 K Street
Sanger, CA 93657

CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 6192

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Madeline Gallo, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Feb. 2, 2017
Date

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105