

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**



**IN THE MATTER OF:**

S. Martinelli & Company  
735 West Beach Street  
Watsonville, California 95076

Respondent

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**Docket No.**  
CAA(112r)-09-2023-0085

**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 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045, Sections 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 and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division (“ECAD”), United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is S. Martinelli & Company (“Respondent”).
4. Pursuant to EPCRA Section 325, 42 U.S.C. § 11045, the Administrator of EPA is authorized to take enforcement action against persons who violate EPCRA Section 312, 42 U.S.C. § 11022. The Administrator delegated this authority to EPA Regional Administrators by delegation 22-3A, dated May 11, 1994 (last revised July 20, 2016). The Regional Administrator of EPA Region IX re delegated this authority to the Director of the Enforcement Division (now called the

Enforcement and Compliance Assurance Division, or “ECAD”) by delegation R9-22-3-B, dated February 11, 2013.

5. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator of EPA is authorized to sign consent agreements memorializing settlements of enforcement actions against persons who violate CAA Section 112(r), 42 U.S.C. § 7412(r). The Administrator delegated this authority to the EPA Regional Administrators by delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region IX redelegated this authority to the Director of the Enforcement Division (now ECAD) by delegation R9-7-6-A, dated February 11, 2013.

6. EPA and the United States Department of Justice jointly determined that this matter, although it involves 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).

7. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. 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.

## **B. GENERAL ALLEGATIONS**

9. Respondent owns and operates a facility located at 227 East Beach Street, Watsonville, CA 95076 (“East Facility”), which is used to produce, bottle, and chill apple juice and cider prior to distribution.

10. Respondent owns and operates a second facility, located at 735 West Beach Street, Watsonville, CA 95076 (“West Facility”), which is also used to produce, bottle, and chill apple

juice and cider prior to distribution. The East Facility and West Facility are sometimes hereinafter collectively referred to as “Facilities.”

11. On September 29, 2021, EPA performed an inspection of the East Facility to evaluate compliance with Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-12, and CAA Section 112(r), 42 U.S.C. § 7412(r) (the “East Facility Inspection”).

12. Based upon the information gathered during the East Facility Inspection and subsequent investigation, EPA alleges that Respondent violated certain provisions of EPCRA and the CAA at the East Facility.

13. On September 28, 2021, EPA performed an inspection of the West Facility to evaluate compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-12, and CAA Section 112(r), 42 U.S.C. § 7412(r) (the “West Facility Inspection”).

14. Based upon the information gathered during the West Facility Inspection and subsequent investigation, EPA alleges that Respondent violated certain provisions of EPCRA and the CAA at the West Facility.

15. At all times relevant to this CA/FO, Respondent has been and continues to be a “person” as defined in EPCRA Section 329(7), 42 U.S.C. § 11049(7) and CAA Section 302(e), 42 U.S.C. § 7602(e).

**i. Section 312 of EPCRA**

16. EPCRA Section 312, 42 U.S.C. § 11022, and 40 C.F.R. § 370.10 require the owner or operator of a facility that is required to prepare or have available a safety data sheet (“SDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 et seq., to submit an annual emergency and hazardous chemical inventory form containing information on hazardous chemicals present at the facility during the preceding calendar year

above the threshold levels established in 40 C.F.R. § 370.10(a). For a hazardous chemical that is an Extremely Hazardous Substance (“EHS”) as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), the threshold is the lower of 500 pounds or the Threshold Planning Quantity (“TPQ”) described in 40 C.F.R. Part 355, Appendices A and B.

17. The East and West Facilities are each “facilities” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. Anhydrous ammonia is an EHS as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a). The TPQ for anhydrous ammonia is 500 pounds. 40 C.F.R. Part 355, Appendices A and B.

19. At all times relevant to this CA/FO, over 500 pounds of anhydrous ammonia were present at both the East Facility and the West Facility.

**ii. Section 112(r) of the CAA**

20. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty in the same manner and to the same as extent as OSHA Section 654, 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

21. The East Facility and West Facility are each “stationary sources,” as defined at CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.



22. At all times relevant to this CA/FO, Respondent has been the owner or operator of the East Facility and the West Facility.

23. Anhydrous ammonia is a regulated toxic substance listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3).

24. At all times relevant to this CA/FO, Respondent has produced, processed, handled, or stored a regulated substance, anhydrous ammonia, within the meaning of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), at both the East Facility and the West Facility.

**C. ALLEGED VIOLATIONS OF LAW**

**i. East Facility**

**Count I**  
**Failure to Timely Report Tier II Inventory Information**

25. Paragraphs 1 through 24 above are incorporated herein by reference.

26. 40 C.F.R. § 370.45 requires the owner or operator of a covered facility to report required inventory information on or before March 1 for inventory held onsite at any time in the preceding year.

27. Based upon the East Facility Inspection and subsequent investigation, EPA determined that Respondent submitted its last Hazardous Materials and Waste Inventory Matrix Report for the East Facility to the Santa Cruz County CUPA via the California Environmental Reporting System (CERS) on Sept. 14, 2020, for reporting year 2019. Respondent did not submit a report by March 1, 2021, for the East Facility for reporting year 2020.

28. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 370.45 by failing to report inventory information for anhydrous ammonia for the East Facility by March 1 of 2020 and 2021.

**Count II**

**Failure to Design and Maintain a Safe Facility: Ammonia Machinery Room Doors Do Not Meet Safety Requirements**

29. Paragraphs 1 through 24 above are incorporated herein by reference.

30. EPA alleges it is a recognized hazard within the anhydrous ammonia industries for a facility not to design machinery room doors to mitigate the consequences of an accidental release. One way to reduce this hazard is to outfit machinery room doors with panic hardware and to ensure that they are tight-fitting and open outward. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 9, 2020, Sections 7.3.2.1 and 7.3.9.2 and ASHRAE 15, 2013 Section 8.12.d.

31. EPA alleges not having tight-fitting machinery room doors could cause harm because in the event of an ammonia release inside the machinery room, the lack of having tight-fitting doors risks the potential spread of ammonia vapors outside the room. Also, it could be more difficult for employees to escape the room when the doors lack panic hardware and open into the room rather than outward.

32. At the time of the East Facility Inspection, EPA noted that the primary exit door from the ammonia machinery room (“AMR”) at the East Facility was not outfitted with panic hardware. The access door to the roof from the AMR did not swing in the direction of egress, did not contain panic hardware, and was not tight-fitting at the bottom.

33. Therefore, EPA alleges that Respondent did not outfit machinery room doors with panic hardware, to swing in the direction of egress, and/or were not tight-fitting at the bottom, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count III**

**Failure to Design and Maintain a Safe Facility: Missing Pipe & Equipment Labeling**

34. Paragraphs 1 through 24 above are incorporated herein by reference.

35. EPA alleges another hazard recognized in the anhydrous ammonia industries is when process equipment and piping is not labeled to indicate system information needed to safely perform operation, maintenance, repair, or emergency response activities. One way to address this hazard is to label all ammonia-containing piping to indicate the pipe's contents, direction of flow, physical state (i.e., liquid or vapor), and pressure level (i.e., high or low), and for other system equipment, such as receivers and accumulators, to install distinctive component markers and labels indicating the installer, the refrigerant, the lubricant, and testing procedures. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR Bulletin 109, Section 4.7.6 and IIAR Bulletin 114, Sections 4.1.1 through 4.1.8; ANSI/IIAR 9, 2020, Section 7.2.9.4; ASME A13.1, 1996 and 2007 Section 3.1; and ASHRAE 15, 2013, Section 11.2.2.

36. The absence of properly labeled process equipment and piping could cause harm because it increases the likelihood that individuals performing maintenance, repair, or emergency activities could be unaware of critical system information needed to safely and effectively perform their duties.

37. At the time of the East Facility Inspection, EPA noted the accumulator in the AMR was not labeled, the surge drum and piping in the Mezzanine Room were not labeled, and the surge drum and piping in the bottling area were not labeled.

38. Therefore, EPA alleges that Respondent failed to label ammonia-containing piping and process equipment in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count IV**

**Failure to Design and Maintain a Safe Facility: Machinery Room Construction Not Fire Resistant**

39. Paragraphs 1 through 24 above are incorporated herein by reference.

40. EPA alleges another hazard recognized in the anhydrous ammonia industries is failing to construct structural components of the machinery room with fire-resistive materials. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 2, 1992, Section 4.4.1 and ASHRAE 15, 2013, Section 8.12.c.

41. EPA alleges not constructing machinery room structural components from fire rated materials could cause harm because it exacerbates the risk of an ammonia release should a fire occur in the facility.

42. At the time of the East Facility Inspection, EPA noted the walls, roof, and floor of the AMR and Mezzanine Room were not constructed with fire rated material.

43. Therefore, EPA alleges that Respondent failed to construct machinery room structural components from fire rated materials in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count V**

**Failure to Design and Maintain a Safe Facility: Surface Corrosion on Pipes and Valves**

44. Paragraphs 1 through 24 above are incorporated herein by reference.

45. EPA alleges another hazard recognized in the anhydrous ammonia industries is failing to maintain piping and valves free from corrosion. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR Bulletin 109, Section 4.7.4 and ANSI/IIAR 6, 2019, Section 10.1.1.

46. Failure to maintain piping and valves free from corrosion could cause harm because it risks the release of ammonia should corrosion continue to the point of failure.

47. At the time of the East Facility Inspection, EPA noted surface corrosion on piping and valves associated with the condensers on the roof, on condenser supports, and on ammonia piping associated with the plate and frame heat exchanger and valves above the compressor in the Mezzanine Room.

48. Therefore, EPA alleges that Respondent failed to prevent corrosion on the piping and valves associated with the condensers on the roof in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count VI**  
**Failure to Design and Maintain a Safe Facility: Protection of Piping and Equipment Surfaces from Frost Buildup**

49. Paragraphs 1 through 24 above are incorporated herein by reference.

50. EPA alleges another hazard recognized in the anhydrous ammonia industries is failing to protect piping and equipment surfaces not intended for heat exchange to mitigate condensation and excessive frost buildup. Insulation and/or defrost procedures can mitigate this risk. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR 9, 2020, Section 7.2.6.1 and ASHRAE 15, 2013, Section 8.10.4.

51. Failure to protect piping and equipment surfaces from condensation and excessive frost buildup is likely to cause harm because ice buildup can weigh down piping, risking collapse and ammonia release. It also exposes pipes to moisture, which can cause corrosion and pipe failure. Excessive frost buildup can also prevent access to valves and other equipment needed to respond to a release or threat of release.

52. At the time of the East Facility Inspection, EPA noted the surge drum and piping in the bottling area were covered in frost and the facility did not have an established defrost procedure to address ice accumulation.

53. Therefore, EPA alleges that Respondent failed to prevent condensation and excessive frost buildup in violation of the Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count VII**  
**Failure to Design and Maintain a Safe Facility: Alarms Not Labeled**

54. Paragraphs 1 through 24 above are incorporated herein by reference.

55. EPA alleges another hazard recognized in the anhydrous ammonia industries is lack of labeling of audible and visual alarms to indicate the meaning of each alarm. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR 9, 2020, Section 7.2.9.1 (2), ANSI/IIAR 2-2008, Section 13.2.4.1, and ASHRAE 15, 2013, Section 8.11.2.1.

56. Failure to label audible and visual alarms could cause harm because personnel working at or responding to an emergency at the facility may be unable to react quickly or appropriately in the event of a release if the meaning of the alarm is not clear.

57. At the time of the East Facility Inspection, EPA noted the audible and visual ammonia alarms in the bottling area were not labeled.

58. Therefore, EPA alleges that Respondent failed to label audible and visual alarms in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count VIII**

**Failure to Design and Maintain a Safe Facility: Lack of Tight-Fitting Construction in the Mezzanine Room**

59. Paragraphs 1 through 24 above are incorporated herein by reference.

60. EPA alleges another hazard recognized in the anhydrous ammonia industries is failing to have tight-fitting construction in ammonia machinery rooms. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 9, 2020, Sections 7.3.2.1 and 7.3.9.2, and ASHRAE 15, 2013, Section 8.11.2.1.

61. Failure to provide for tight-fitting construction in ammonia machinery rooms could cause harm because it may allow for a release of ammonia inside the machinery room to spread to other parts of the building.

62. At the time of the East Facility Inspection, EPA inspectors noted that the Mezzanine Room did not have tight construction; there was no door into the Mezzanine Room housing a compressor, surge drum and plate and frame heat exchanger; and the “walls” adjacent to the bottling area were plastic strips that could potentially allow an ammonia release to migrate into the bottling area.

63. Therefore, EPA alleges that Respondent failed to provide for tight construction of the Mezzanine Room in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count IX**

**Failure to Design and Maintain a Safe Facility: AMR Exhaust Discharge**

64. Paragraphs 1 through 24 above are incorporated herein by reference.

65. Another hazard recognized in the anhydrous ammonia industries is when exhaust from a machinery room is vented to the outside in an improper manner that fails to provide proper

dispersion. EPA identified examples of industry standards designed to mitigate this recognized risk to include ASHRAE 15, 1989, Section 10.13.4 and ANSI/IIAR 9, 2020, Section 7.3.13.2.

66. Improper venting of machinery room exhaust could cause harm because the poor dispersion of ammonia vapor from the exhaust can result in higher concentrations of ammonia vapor near the surface of the roof and nearby buildings, which increases the risk of exposure.

67. At the time of the East Facility Inspection, inspectors noted that exhaust from the AMR was discharged horizontally onto the roof adjacent to the walkway leading to the evaporative condensers.

68. Therefore, EPA alleges that Respondent failed to provide for the proper ventilation of exhaust from the machinery room in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

### **Count X**

#### **Failure to Design and Maintain a Safe Facility: Inadequate Ventilation in Mezzanine Room**

69. Paragraphs 1 through 24 above are incorporated herein by reference.

70. Another hazard recognized in the anhydrous ammonia industries is inadequate ventilation in ammonia machinery rooms. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 2, 1992, Section 4.3.3.1 and ASHRAR 15, 2013 Section 8.11.5.

71. Inadequate ventilation of an ammonia machinery room could cause harm because vapors are more likely to build up to levels that are significant inhalation and dermal hazards, or that risk causing fire or explosion.



72. At the time of the East Facility Inspection, EPA inspectors noted that the continuous ventilation system in the Mezzanine Room was not adequately sized for an ammonia release, and there was no emergency ventilation system activated by ammonia detectors.

73. Therefore, EPA alleges that Respondent failed to provide for adequate ventilation of the Mezzanine Room in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XI**  
**Failure to Design and Maintain a Safe Facility: Lack of Visual and Audible Ammonia Alarms for AMR and Mezzanine Room**

74. Paragraphs 1 through 24 above are incorporated herein by reference.

75. EPA alleges another hazard recognized in the anhydrous ammonia industries is a lack of audible or visual ammonia alarms in ammonia machinery rooms. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 9, 2020, Section 7.3.12.1 (3), ASHRAE 15, 2013 Section 8.11.2.1, IIAR Bulletin 109, Section 4.7.4 and ANSI/IIAR 6, 2019, Section 10.1.1.

76. Failure to provide for audible and visual alarms in ammonia machinery rooms could cause harm because ammonia alarms provide early warning that a release is taking place, enabling quick response and protecting workers, emergency responders, and the public from a potentially larger release.

77. At the time of the East Facility Inspection, EPA noted that no visual or audible ammonia alarms were present either inside of or outside the entrance to the AMR or the Mezzanine Room.

78. Therefore, EPA alleges that Respondent failed to provide for audible and visual alarms inside the ammonia machinery rooms and outside their entrances in violation of Section 112(r)(1)

of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XII**

**Failure to Design and Maintain a Safe Facility: Improper Set Point for Ammonia Alarm**

79. Paragraphs 1 through 24 above are incorporated herein by reference.

80. Another hazard recognized in the anhydrous ammonia industries is improper programming of ammonia alarms. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR-2, 2021 Section 13.3.3 and ASHRAE 15, 2013 Section 8.11.2.1.

81. Failure to properly program ammonia alarms could cause harm because the alarms may not trigger at early signs of an ammonia release and may not trigger until harmful levels of ammonia have already been released, potentially endangering workers, emergency responders, and the public.

82. At the time of the East Facility Inspection, EPA noted that the ammonia detector inside the AMR was set to annunciate at 125 ppm, whereas relevant industry standards provide that such alarms should trigger at 25 ppm. The ammonia detector in the AMR was re-set to trigger at 25 ppm during the inspection.

83. Therefore, EPA alleges that Respondent failed to set the ammonia alarm in the AMR to annunciate at an appropriately low detection level, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XIII**

**Failure to Minimize Consequences of an Accidental Release: Inadequate Emergency Response Coordination**

84. Paragraphs 1 through 24 above are incorporated herein by reference.

85. Another hazard recognized in the anhydrous ammonia industries is failing to coordinate with local responders who would respond to the facility in the event of an accidental release, and to document such coordination. EPA identified an example of an industry standard designed to mitigate this recognized risk as California Accidental Release Prevention (CalARP) regulation Title 19, Division 2, Chapter 4.5, Article 7, Emergency Response, Section 2765.1(b)(1).

86. Failure to coordinate with local response agencies could cause harm because lack of specific coordination related to hazardous materials with the fire department and other emergency responders may impede proper emergency response in the event of a release.

87. At the time of the East Facility Inspection and subsequent investigation, EPA noted Respondent could produce no documentation of coordination with local response agencies specific to potential ammonia releases from the facility other than documentation of annual fire safety inspections.

88. Therefore, EPA alleges that Respondent failed to adequately demonstrate coordination with local response agencies for a potential ammonia release from the East Facility in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to minimize the consequences of an accidental release.

**ii. West Facility**

**Count XIV**  
**Failure to Timely Report Tier II Inventory Information**

89. Paragraphs 1 through 24 above are incorporated herein by reference.

90. 40 C.F.R. § 370.45 requires the owner or operator of a covered facility to report required inventory information on or before March 1 for inventory held onsite at any time in the preceding year.

91. Based upon the West Facility Inspection and subsequent investigation, EPA determined that Respondent submitted its last Hazardous Materials and Waste Inventory Matrix Report for the West Facility to the Santa Cruz County Certified Unified Program Agency (“CUPA”) via the California Environmental Reporting System (CERS) on July 29, 2021, for reporting year 2020.

92. Therefore, EPA alleges that Respondent failed to report inventory information for anhydrous ammonia at the West Facility by March 1 of 2021, in violation of 40 C.F.R. § 370.45.

### **Count XV**

#### **Failure to Design and Maintain a Safe Facility: Improper Set Point for Ammonia Alarm**

93. Paragraphs 1 through 24 above are incorporated herein by reference.

94. As described in Paragraph 80, a hazard recognized in the anhydrous ammonia industries is improper programming of ammonia alarms. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR-2, 2021 Section 13.3.3 and ASHRAE 15, 2013 Section 8.11.2.1.

95. EPA alleges failure to properly program ammonia alarms could cause harm because the alarms may not trigger at early signs of an ammonia release and instead may not trigger until harmful levels of ammonia have already been released, potentially endangering workers, emergency responders, and the public.

96. At the time of the West Facility Inspection, EPA noted that the ammonia detector inside the AMR was set to annunciate at above 25 ppm, whereas EPA alleges that relevant industry standards provide that such alarms should trigger at 25 ppm. The ammonia detector in the AMR was reset to trigger at 25 ppm during the inspection.

97. Therefore, EPA alleges that Respondent failed to set the ammonia alarm in the AMR to annunciate at an appropriately low detection level in violation of Section 112(r)(1) of the CAA, 42

U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XVI**

**Failure to Design and Maintain a Safe Facility: Inadequate Ammonia Sensor and Alarm Testing**

98. Paragraphs 1 through 24 above are incorporated herein by reference.

99. EPA alleges another hazard recognized in the anhydrous ammonia industries is failure to adequately test ammonia sensors and alarms. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 2-2008, Sections 13.2.5.1 and 13.2.5.2; IIAR 6-2019, Table 12.3, Ammonia Detection Alarm Systems Inspection, Testing, and Maintenance Tasks; and ASHRAE 15-2013, Section 11.6.3.

100. Failure to adequately test ammonia alarms and sensors could cause harm because failure of an alarm or sensor may prevent detection of an ammonia release and inhibit emergency response procedures.

101. At the time of the West Facility Inspection and subsequent investigation, EPA noted Respondent was unable to provide records of ammonia alarm functionality testing for 2019, 2021, and 2022.

102. Therefore, EPA alleges that Respondent failed to adequately test ammonia sensors and alarms, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XVII**

**Failure to Design and Maintain a Safe Facility: Alarms Not Labeled**

103. Paragraphs 1 through 24 above are incorporated herein by reference.

104. As described in Paragraph 55, a hazard recognized in the anhydrous ammonia industries is lack of labeling of audible and visual alarms to indicate the meaning of each alarm. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR 9, 2020, Section 7.2.9.1 (2), IIAR 2, 2008 Section 13.2.4.1, and ASHRAE 15, 2013, Section 8.11.2.1.

105. EPA alleges not labeling audible and visual alarms could cause harm because personnel working at or responding to an emergency at the facility may be unable to react quickly or appropriately in the event of a release if the meaning of the alarm is not clear.

106. At the time of the West Facility Inspection, EPA noted that the audible and visual ammonia alarms near the entry door to the AMR and the audible alarms inside the AMR and at the secondary entry door were not labeled regarding their function.

107. Therefore, EPA alleges that Respondent failed to label audible and visual alarms to indicate their meaning in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

### **Count XVIII**

#### **Failure to Design and Maintain a Safe Facility: No Visual Ammonia Alarm in Ammonia Machinery Room**

108. Paragraphs 1 through 24 above are incorporated herein by reference.

109. As described in Paragraph 75, a hazard recognized in the anhydrous ammonia industries is a lack of visual ammonia alarms in ammonia machinery rooms. EPA identified examples of industry standards designed to mitigate this recognized risk to include ANSI/IIAR 9, 2020, Section 7.3.12.1 (3); ASHRAE 15, 2013 Section 8.11.2.1; IIAR Bulletin 109, Section 4.7.4; and ANSI/IIAR 6, 2019, Section 10.1.1.

110. Failure to provide for visual alarms in ammonia machinery rooms could cause harm because visual ammonia alarms provide early warning that a release is taking place, enabling quick

response and protecting workers, emergency responders, and the public from a potentially larger release.

111. At the time of the West Facility Inspection, EPA noted there was no visual ammonia alarm inside the AMR and no visual ammonia alarm outside the secondary entry door into the AMR from the bottling area.

112. Therefore, EPA alleges that Respondent failed to provide for visual alarms inside the ammonia machinery room and outside its entrances in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XIX**

**Failure to Design and Maintain a Safe Facility: Inaccurate Labeling of Emergency Control Box Diagram**

113. Paragraphs 1 through 24 above are incorporated herein by reference.

114. Another hazard recognized in the anhydrous ammonia industries is inaccurate labeling of stop valves that control pressures within the system. EPA identified an example of an industry standard designed to mitigate this recognized risk as ASHRAE 15-2013 Section 9.12.6.

115. Failure to accurately label stop valves could cause harm because employees or emergency responders may inadvertently activate the wrong valve and potentially cause or fail to slow or prevent an ammonia release from the facility.

116. At the time of the West Facility Inspection, EPA noted the valve identification numbers on the operating instructions inside the Fire Department Emergency Control box to reduce pressures within the system did not correspond to actual valve tags in the control box.

117. Therefore, EPA alleges that Respondent inaccurately labeled valves that reduce pressures within the system in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which

requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XX**

**Failure to Design and Maintain a Safe Facility: Corroded Inlet Piping to Pressure Relief Valves**

118. Paragraphs 1 through 24 above are incorporated herein by reference.

119. EPA alleges another hazard recognized in the anhydrous ammonia industries is corrosion of piping. EPA identified an example of an industry standard designed to mitigate this recognized risk as IIAR Bulletin 109, Section 4.7.4.

120. Corroded piping could cause harm because it can cause an ammonia release if the corrosion continues to the point of failure.

121. At the time of the West Facility Inspection, inspectors noted corroded inlet piping to the low-pressure receiver pressure relief valves (PRVs).

122. Therefore, EPA alleges that Respondent failed to prevent or address corrosion on piping in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XXI**

**Failure to Design and Maintain a Safe Facility: Improperly Sized PRVs**

123. Paragraphs 1 through 24 above are incorporated herein by reference.

124. EPA alleges another hazard recognized in the anhydrous ammonia industries is improper sizing on PRVs to protect multiple vessels. EPA identified an example of an industry standard designed to mitigate this recognized risk as ANSI/IIAR 2, 2008, Section 11.2.7.

125. Failure to properly size a pressure relief valve that serves multiple vessels could cause harm because an undersized valve could potentially fail because it may not be able to handle the



combined relief capacity of multiple vessels under ordinary operating conditions, potentially causing a release of ammonia.

126. At the time of the West Facility Inspection, EPA noted two high pressure receivers with a common set of PRVs that were sized for a single pressure vessel.

127. Therefore, EPA alleges that Respondent improperly sized PRVs that serve multiple pressure vessels in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

### **Count XXII**

#### **Failure to Design and Maintain a Safe Facility and Failure to Identify Hazards: No Records of Safety Cutout Testing**

128. Paragraphs 1 through 24 above are incorporated herein by reference.

129. EPA alleges another hazard recognized in the anhydrous ammonia industries is failure of safety cutouts on compressors and pumps, leading to over-pressurization or excessive temperatures in the system that can be prevented by conducting and documenting regular testing of safety cutouts. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR 6-2019 Sections 5.3.2, 6.1, and 7.1.

130. Failure to regularly test safety cutouts could cause harm because the safety cutouts may fail in the event of an emergency, potentially causing or contributing to a release of ammonia.

131. At the time of the West Facility Inspection, EPA inspectors noted that the Hazard Review conducted by Respondent in 2021 recommended annual safety cutout testing documentation be obtained from the refrigeration contractor, and Respondent subsequently confirmed that the refrigeration contractor had no records and was not maintaining documentation of annual safety cutout testing.

132. Therefore, EPA alleges that Respondent failed to maintain records of safety cutout testing in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases and failed to identify hazards.

**Count XXIII**

**Failure to Design and Maintain a Safe Facility: No Safety Shower in Machinery Room**

133. Paragraphs 1 through 24 above are incorporated herein by reference.

134. EPA alleges another hazard recognized in the anhydrous ammonia industries is an ammonia release from an ammonia machinery room, necessitating emergency eye wash stations and safety showers both inside and outside of the machinery room. EPA identified examples of industry standards designed to mitigate this recognized risk to include IIAR 9, 2020, Section 7.3.7.1 and IIAR Bulletin 109, 1997, Section 4.10.10.

135. Failure to provide for a safety shower within an ammonia machinery room could cause harm because employees or emergency responders exposed to ammonia in the event of a release may be unable to quickly decontaminate themselves to prevent additional harm from exposure.

136. At the time of the West Facility Inspection, EPA noted there was an eye wash station in the AMR but no safety shower.

137. Therefore, EPA alleges that Respondent failed to provide a safety shower within the AMR in violation of Section 112(r)(1) of the CAA, 42 U.S.C. 7412(r)(1), which requires owners and operators to design and maintain a safe facility taking such steps as are necessary to prevent releases.

**Count XXIV**

**Failure to Minimize Consequences of an Accidental Release: Inadequate Emergency Response Coordination**

138. Paragraphs 1 through 24 above are incorporated herein by reference.

139. As described in Paragraph 85, another hazard recognized in the anhydrous ammonia industries is failing to coordinate with local responders who would respond to the facility in the event of an accidental release, and to document such coordination. EPA identified an example of an industry standard designed to mitigate this recognized risk as California Accidental Release Prevention (CalARP) regulation Title 19, Division 2, Chapter 4.5, Article 7, Emergency Response, Section 2765.1(b)(1).

140. Failure to coordinate with local response agencies could cause harm because lack of specific coordination related to hazardous materials with the fire department and other emergency responders may impede proper emergency response in the event of a release.

141. At the time of the West Facility Inspection and subsequent investigation, EPA noted that Respondent could produce no documentation of coordination with local response agencies specific to potential ammonia releases from the facility other than documentation of annual fire safety inspections.

142. Therefore, EPA alleges that Respondent failed to adequately demonstrate coordination with local response agencies for a potential ammonia release from the West Facility in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), which requires owners and operators to minimize the consequences of an accidental release.

**D. CIVIL PENALTY**

143. EPA proposes that Respondent be assessed, and Respondent agrees to pay, a civil penalty in the amount of **ONE HUNDRED AND TWENTY-SEVEN THOUSAND EIGHT HUNDRED AND TWENTY-EIGHT DOLLARS (\$127,828)**, pursuant to 40 C.F.R. § 22.18(c).

144. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and the “Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning

and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act” dated September 30, 1999, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

145. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. All payments shall indicate the Respondent’s name and address, Respondent’s point of contact person and phone number, and the EPA docket number for this action. Payment made by corporate, certified, or cashier’s checks shall be payable to “Treasurer of the United States.” Information on how to make a payment to EPA can accessed here: <https://www.epa.gov/financial/makepayment>.

146. Respondent shall send a copy of each check, or notification that the payment has been made by one of the methods provided on the website in Paragraph 145, above, including proof of the date payment was made, 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

Bridget Johnson  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 9  
Johnson.Bridget@epa.gov

147. 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. Respondent further will be liable for stipulated penalties as set forth below for failure to pay the civil penalty by the due date.

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

**E. RESPONDENT'S ADMISSIONS AND WAIVERS OF RIGHTS**

149. In accordance with 40 C.F.R. § 22.18(b) and for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the complaint; (b) neither admits nor denies the specific factual allegations contained in the complaint; (c) consents to the assessment of the stated civil penalty, to the issuance of the specified compliance or corrective action order, and to the conditions specified in the consent agreement; and (d) waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

**F. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

150. In response to the alleged violations of Section 325 of EPCRA, 42 U.S.C. § 11045, and Sections 113(a)(3)(A) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A) and (d) and in settlement of this matter, although not required by EPCRA, the CAA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in Paragraph 151.

151. Respondent shall complete an emergency response equipment donation SEP, consisting of providing certain emergency response equipment to the City of Watsonville Fire Department, as described in further detail below. Respondent shall arrange for and provide the Watsonville Fire Department with the following equipment:

- A. Six (6) QXT Thermal Imaging Cameras (estimated to cost \$37,000);

- B. Four (4) Industrial Scientific Ventis MX4 Gas Monitors (estimated to cost \$4,500);
- C. Four (4) MSA Altair 2X NH3 (Ammonia) Detectors (estimated to cost \$3,100); and
- D. Four (4) Motorola APX 6000 Portable Radios (estimated to cost \$22,400).

152. Respondent shall spend no less than sixty-seven thousand dollars (\$67,000) implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Paragraph 151 does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase and provide additional emergency response equipment to the Watsonville Fire Department.

153. Respondent shall complete the SEP by providing to the Watsonville Fire Department the equipment listed in Paragraph 151(A)-(D) within one hundred and eighty (180) days of the Effective Date of this CA/FO.

154. Respondent has selected the Watsonville Fire Department to receive emergency response equipment as part of this SEP. The EPA had no role in the selection of the Watsonville Fire Department as a SEP recipient to receive equipment under this project, or in the selection of specific equipment identified in the SEP. This CA/FO shall not be construed to constitute EPA approval or endorsement of any SEP recipient or any specific equipment identified in this CA/FO.

155. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015). The SEP advances at least one of the objectives of EPCRA and the CAA by enhancing the capabilities of local emergency responders to respond to accidental releases of hazardous materials, and thereby

minimizing the consequences of accidents that do occur. The SEP is not inconsistent with any provision of EPCRA or the CAA. The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and/or the environment potentially affected by the alleged violations (i.e., the risk of releases of hazardous substances) by enhancing the local fire department's ability to respond to releases involving hazardous materials.

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

- A. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$67,000;
- B. That Respondent will not include administrative costs, attorney costs, or employee oversight of the implementation of the SEP in its estimate of the cost to implement the SEP;
- C. That, as of the date of Respondent's signing of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- D. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
- E. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- F. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

- G. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- H. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 151; and
- I. That Respondent has inquired of the Watsonville Fire Department whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Watsonville Fire Department that it is not a party to such a transaction.

157. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of federal laws.”

158. SEP Completion Report.

- A. Respondent shall submit a SEP Completion Report to EPA within two-hundred and ten (210) days after the Effective Date of this CA/FO. The SEP Completion Report shall contain the following information, with supporting documentation:
  - (1) A detailed description of the SEP as implemented;
  - (2) A description of any operating problems encountered and the solutions thereto;
  - (3) Receipts documenting itemized costs;
  - (4) Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and



- (5) A description of the environmental and public health benefits resulting from implementation of the SEP.
- B. The certification required by subparagraph A(4) above shall contain the following language: 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.
- C. Respondent agrees that failure to submit the SEP Completion Report as required by subsections A and B above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraphs 172 and 173 below.
- D. Respondent shall submit all notices and reports required by this CA/FO to:
- Bridget Johnson  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 9  
Johnson.Bridget@epa.gov
- E. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made.

159. EPA acceptance of SEP Report.

- A. After receipt of the SEP Completion Report described in Paragraph 158 above, EPA will, in writing, either:
- (1) Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
  - (2) Indicate that EPA concludes that the project has been completed satisfactorily; or
  - (3) Determine that the project has not been completed satisfactorily and indicate that EPA will seek stipulated penalties in accordance with Paragraph 173 herein consistent with subparagraph (B) below.
- B. If EPA elects to exercise option (1) or (3) above, Respondent may object in writing to the notification of deficiency or non-satisfactory completion given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on additional measures needed to achieve satisfactory performance, and/or changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA may, at its discretion, revise its decision, request additional information from Respondent, or confirm its decision, which shall then be final and binding upon Respondent.

**G. PARTIES BOUND**

160. 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, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.

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

162. 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 Facilities and shall notify EPA within seven (7) days prior to such transfer; such notification may be marked as business confidential information pursuant to 40 CFR 2.203(b).

163. 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.

164. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director of ECAD, EPA Region IX.

#### **H. COMPLIANCE TASKS**

165. By December 29, 2023, Respondent shall submit to EPA documentation demonstrating that the Mezzanine Room at the East Facility is enclosed with tight construction, including solid walls, able to meet applicable fire standards, and outfitted with machinery room doors that are self-closing, tight-fitting, outwardly opening, and equipped with panic hardware. The Mezzanine Room's new construction shall comply with ANSI/IIAR 9, 2020, Section 7.3 and ASHRAE 15, 2013, Section 8, and other relevant standards and requirements. The documentation of completion shall include dated photographs depicting the Mezzanine Room from all four angles and may include copies of work orders or invoices describing the work completed.

166. By October 1, 2023, Respondent shall submit to EPA documentation demonstrating that a sprinkler system (or other fire resistance modifications) complying with the ANSI/IIAR 2 1992 Section 4.4.1 one-hour fire resistant construction standard is installed and functioning in the East Facility's AMR and Mezzanine Room. If Respondent intends to install other fire resistance modifications in lieu of sprinkler systems, Respondent shall propose such modifications to EPA thirty (30) days prior to their installation for EPA's approval. The documentation of completion shall include dated photographs depicting the sprinkler systems in both rooms, with a wide enough angle to show the sprinklers' position relative to the rooms, and diagrams or plans showing that the sprinklers' positioning is adequate to meet the ANSI/IIAR 2, 2021 Section 6.2.1 one-hour fire resistant construction standard.

167. All submissions to EPA in this section shall be in writing and submitted to Bridget Johnson at EPA, at [Johnson.Bridget@epa.gov](mailto:Johnson.Bridget@epa.gov).

168. Extension(s) of Time. Respondent shall complete each task required in this section by the deadline for that task. If Respondent is unable to complete the tasks required in this section by the appropriate deadline, Respondent shall submit a written request for a modification, including the basis for the request, to EPA before the deadline. Respondent shall submit this request within fourteen (14) days of identifying a need for an extension. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for extension. EPA shall respond as soon as possible and within no later than 30 days after receipt of a request for extension of time.

169. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section H (Compliance Tasks) is restitution, remediation or required to come into compliance with the law.

**I. CERTIFICATION OF COMPLIANCE**

170. Respondent certifies to EPA that as of the Effective Date, except as to obligations that may be required pursuant to Section H (Compliance Tasks), it has fully complied with the requirements of EPCRA Section 312, 42 U.S.C. § 11022, and CAA Section 112(r), 42 U.S.C. § 7412(r), that formed the basis for the violations alleged in this CA/FO.

171. 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.

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

172. In the event Respondent fails to meet any requirement set forth in this CA/FO, including the requirements regarding the SEP specified in Section F, 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.

173. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 152, Respondent shall pay a stipulated penalty to the United States in the amount of \$84,000. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$67,000 to purchase and donate emergency response equipment described in Paragraph 151 to the Watsonville Fire Department. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA. The sum of the

stipulated penalties Respondent shall pay under Paragraphs 172 and 173 for failure to meet the SEP requirements of Section F shall not exceed \$84,000.

174. 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 thirty (30) 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 D of this CA/FO.

175. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the thirty-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 EPCRA, the CAA and their respective implementing regulations.

176. 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.

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

**K. RESERVATION OF RIGHTS**

178. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

179. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

**L. MISCELLANEOUS**

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

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

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

183. This CA/FO may be signed in counterparts.

184. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

185. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 165 through 169 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 C 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.

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

**M. EFFECTIVE DATE**

187. 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.

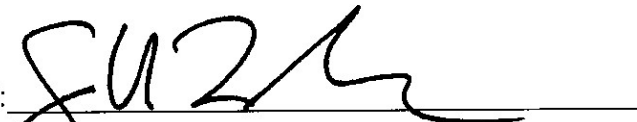
IT IS SO AGREED.



In the Matter of S. Martinelli & Company  
Consent Agreement and Final Order

Respondent S. Martinelli & Company

DATE: Sept 6, 2023

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

Name: GUNLEK RUDER

Title: PRESIDENT & CEO

In the Matter of S. Martinelli & Company  
Consent Agreement and Final Order

United States Environmental Protection Agency, Region 9

**AMY MILLER-  
BOWEN**

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2023.09.14 09:10:43  
-07'00'

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

Amy C. Miller-Bowen

Director

Enforcement and Compliance Assurance Division

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (“CA/FO”) in the Matter of S. Martinelli & Company (Docket No. CAA(112r)-09-2023-0085) be entered and that Respondent shall pay a civil penalty of **ONE HUNDRED AND TWENTY-SEVEN THOUSAND EIGHT HUNDRED AND TWENTY-EIGHT DOLLARS (\$127,828)**, and spend at least **SIXTY-SEVEN THOUSAND DOLLARS (\$67,000)** to implement a Supplemental Environmental Project in accordance with all terms and conditions of this CA/FO.

**BEATRICE  
WONG**

Digitally signed by  
BEATRICE WONG  
Date: 2023.09.15 11:42:55  
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Beatrice Wong  
Regional Judicial Officer  
U.S. EPA, Region IX

Date

