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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
West Liberty Foods	)	
207 West 2 <sup>nd</sup> Street	)	Docket No. CAA-07-2006-0244
West Liberty, Iowa 52776	)	
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and West Liberty Foods (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

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

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a risk management program as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is West Liberty Foods, LLC, located at 207 West 2<sup>nd</sup> Street, West Liberty, Iowa. Respondent is incorporated in the State of Iowa and registered to do business in the State of Iowa.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), authorizes the United States to commence an action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the Clean Air Act that occurs before January 30, 1997. Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil

penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

#### Definitions

10. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

11. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

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

#### Alleged Violations

14. EPA alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

15. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent's facility located at 207 West 2<sup>nd</sup> Street, West Liberty, Iowa, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

17. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

18. Information reviewed showed that Respondent has exceeded the threshold quantity for anhydrous ammonia at its facility in West Liberty, Iowa.

19. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

20. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

21. Information reviewed showed that Respondent failed to implement a risk management program at its facility that included all the requirements of a prevention program as required by 40 C.F.R. Part 68.

22. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

#### CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

24. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

25. Respondent neither admits nor denies the factual allegations set forth above.

26. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

27. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

28. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the Clean Air Act or other applicable law.

29. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is presently in compliance with all

requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

30. The effect of settlement described in paragraph 28 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in this Consent Agreement and Final Order.

31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

32. Pursuant to § 113(e) of the Clean Air Act, the nature of the violations, Respondent's agreement to perform Supplemental Environmental Projects (SEPs) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Thirty Thousand Dollars (\$30,000).

33. The penalty specified in paragraph 32 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

34. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 32, above, and to the performance of the Supplemental Environmental Project.

35. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Projects (SEPs), which the parties agree is intended to secure significant environmental and/or public health benefits.

36. Respondent shall complete the following SEPs at a total cost greater than or equal to \$31,977.00:

a. Purchase a Stryker Stair Pro, Model #6252 at a cost of approximately \$2,424.00 for the West Liberty Fire Department;

b. Purchase four gas monitor MSA Solaris Deluxe Kit, Part Number 10071205 at a cost of approximately \$1,120.00 and a CO2 Nonin Pulse Oximeter with case, Part #6915-9216EBK at a cost of approximately \$1,300.00 for the Atalissa Fire Department;

c. Purchase six Gas Monitors, Part #18104307-11347 at a cost of approximately \$2,210.00 and a Charger for the monitors, Part #18104711-120 at a cost of approximately \$375.00 for the Muscatine HAZMAT Team;

d. Purchase two SCBA Airhawks, Part # B-AL133GoC1201 at a cost of approximately \$3,698 and purchase and install a lockable storm water drain at the West Liberty facility at a cost of approximately \$20,850.00.

All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

37. The total expenditure for the SEP shall be not less than \$31,977.00 and the SEP shall be completed no later than one hundred and twenty (120) days after the effective date of this Consent Agreement and Final Order. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

38. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

39. Within sixty (60) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs;
- (iii) A description of any operating problems encountered and the solutions thereto;
- (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
- (vi) Receipt(s) from recipients of equipment donations
- (vii) The report shall be submitted via first class mail to:

George Hess  
ARTD/CRIB  
United States Environmental Protection Agency - Region VII  
901 N. Fifth Street  
Kansas City, Kansas 66101.

40. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

41. After receipt of the SEP Completion Report described in paragraph 39, above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily; or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 48 herein. If EPA elects to exercise option (i) above, i.e., if the SEP report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days from the 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 changes necessary to the SEP report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph herein.

42. Respondent agrees that failure to submit the SEP Completion Report required by paragraph 39 above, shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 43 below:

43. Stipulated Penalties

a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 40 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 41 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of the cost described for that SEP in each of the subparagraphs of paragraph 36.
- (ii) If the SEP is not completed in accordance with paragraph 36, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (ii) If the SEP is completed in accordance with paragraph 36, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$31,977.00 minus the total amount spent on the SEP.
  - (iv) If the SEP is completed in accordance with paragraph 36, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
  - (v) For failure to submit the SEP Completion Report required by paragraph 39 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date of the Completion Report stated in paragraph 39 above, until the report is submitted.
- b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c) Stipulated penalties for paragraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 below. Interest and late charges shall be paid as stated in paragraph 50 herein.

44. Respondent understands that the failure to pay any portion of the mitigated civil penalty as stated in paragraph 32, or any portion of a stipulated penalty as stated in paragraph 43, in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

45. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the debt collection, including processing and handling costs and attorney's fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty becomes

due and is not paid, 40 C.F.R. §§ 102.13(d) and (e). 46. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

47. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment of technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

48. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

#### FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty Thousand Dollars (\$30,000) within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

This payment shall reference docket number CAA-07-2006-0244.

2. A copy of each check shall be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region VII  
901 N. Fifth Street  
Kansas City, Kansas 66101

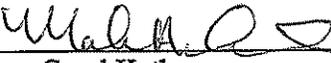
and to:

Kent Johnson  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region VII  
901 N. Fifth Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Projects in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such a project as specified in the Consent Agreement.

4. This executed Consent Agreement and Final Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

COMPLAINANT:  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By   
Carol Kather

For Acting Director  
Air, RCRA, and Toxics Division

Date 9/26/06

By   
Kent Johnson  
Assistant Regional Counsel

Date 9/26/06

RESPONDENT:  
WEST LIBERTY FOODS, LLC  
WEST LIBERTY, IOWA

By Ed Garrett

Title President & CEO

Date 9/2/06

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date Sept. 28, 2006

IN THE MATTER OF West Liberty Foods, Respondent  
Docket No. CAA-07-2006-0244

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to:

Kent Johnson  
Senior Assistant Regional Counsel  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michele Miller  
West Liberty Foods  
207 W. 2nd Street  
P.O. Box 318  
West Liberty, Iowa 52776-0318

and a copy to:

William J. Koehn  
Davis, Brown, Koehn, Shors & Roberts, P.C.  
The Financial Center  
666 Walnut Street, Suite 2500  
Des Moines, Iowa 50309-3993

9/28/06  
Dated

  
Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7