

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:	)	U.S. EPA Docket No.
	)	
	)	MM-09-2026-0139
Tropicale Foods, LLC; and	)	
PLM Operations, LLC	)	
	)	
Respondents	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
	)	40 C.F.R. SECTIONS 22.13 AND
	)	22.18



CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A), (d), Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, Section 325(b) 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, as codified at 40 Code of Federal Regulations (C.F.R.) Part 22 ("Consolidated Rules").
2. The Administrator has delegated enforcement authority under CAA Section 113(d), 42 U.S.C. § 7413(d), CERCLA Section 109, 42 U.S.C. § 9609, and EPCRA Section 325, 42 U.S.C. § 11045 to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter, "Complainant."
3. Respondents are Tropicale Foods, LLC, and its subsidiary PLM Operations, LLC, (collectively "Respondents").
4. 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).

5. Complainant and Respondents agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. PARTIES BOUND

6. This CA/FO shall apply to and be binding on Respondents, Respondents' officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondents shall not excuse any failure of Respondents to fully perform their obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondents' obligations under this CA/FO.

C. STATUTORY AND REGULATORY FRAMEWORK

a. CAA Section 112(r)

7. Pursuant to CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental release of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
8. CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), defines "stationary source" as "any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."
9. Anhydrous ammonia is a "regulated substance" listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. See 40 C.F.R. § 68.130, Table 1.
10. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.10(l), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(l)(1) or subject to the Occupational Safety and Health Administration ("OSHA") process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the "Program 3" requirements set forth in 40 C.F.R. § 68.12(d).

11. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.

CERCLA Section 103 and EPCRA Section 304

12. 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”).
13. 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 local emergency planning committee (“LEPC”) and to the state emergency planning commission (“SERC”) for each area and state likely to be affected by the release.
14. 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 C.F.R. Part 302, Table 302.4, and 40 C.F.R. Part 355, Appendix A, is one hundred (100) pounds.
15. Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, as adjusted by the Debt Collection Improvement Act of 1996, see 40 C.F.R. Part 19, authorize civil penalties of \$71,545 per day for each day a violation occurs or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025. See Tables 1 of 40 C.F.R. § 19.4.

D. GENERAL ALLEGATIONS

16. At all times relevant to this CA/FO, Respondents have been “persons” as defined in CAA Section 302(e), 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. At all times relevant to this CA/FO, Respondents operated a facility (the “Facility”) located at 2068 Lapham Drive, Modesto, California, that utilizes anhydrous ammonia for the production and manufacturing of ice cream.

18. At all times relevant to this CA/FO, Respondents have been the “owners or operators” of the Facility, as defined at Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
19. At all times relevant to this CA/FO, the real property and improvements thereto located at the Facility has been a “stationary source” as defined by CAA Section 112(r)(2)(C), 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).
20. At all times relevant to this CA/FO, Respondents produced, used or stored more than 10,000 pounds of anhydrous ammonia at the Facility.
21. At all times relevant to this CA/FO, Respondents were subject to the Program 3 requirements of CAA Section 112(r)(7) because there are public receptors within the distance to the endpoint for the worst-case release from the Facility and were subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.
22. On March 21, 2024, there was a release of approximately 225 pounds of anhydrous ammonia from the Facility.
23. On June 12, 2024, and September 30, 2024, EPA sent Requests for Information regarding the release incident of March 21, 2024 and the Facility’s operations to evaluate compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-11022, and CAA Section 112(r), 42 U.S.C. § 7412(r) (the “Requests for Information”). Based upon the information gathered in response to the Requests for Information and subsequent investigation, EPA determined that Respondents violated certain provisions of the CAA, CERCLA, and EPCRA.

E. ALLEGED VIOLATIONS

Count I

(Failure to Immediately Report the March 21, 2024 Ammonia Release to the National Reporting Center)(CERCLA § 103)

24. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
25. Pursuant to CERCLA Section 103, 42 U.S.C. § 9603, any person in charge of a facility is required, as soon as they have knowledge of a release of a hazardous substance from a facility in a quantity equal to or greater than the RQ, to immediately notify the NRC of the release.
26. Based upon the information obtained during EPA’s investigation, EPA determined that Respondents notified the NRC 2 hours and 22 minutes after the start of a release of 225 pounds of ammonia from the Facility on March 21, 2024.

27. By failing to notify the NRC immediately upon having knowledge that a RQ of a hazardous substance had been released at its Facility on March 21, 2024, Respondents violated CERCLA Section 103, 42 U.S.C. § 9603.

Count II

(Failure to Report the March 21, 2024 Ammonia Release to the California Office of Emergency Services)(EPCRA § 304)

28. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
29. Pursuant to EPCRA Section 304, 42 U.S.C. § 11004, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored which requires notification of the NRC under CERCLA Section 103, 42 U.S.C. § 9603, the owner or operator of the facility shall immediately provide notice to the SERC of any State likely to be affected by the release.
30. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to notify the California Office of Emergency Services ("OES"), the SERC in California, regarding the release of ammonia at the Facility on March 21, 2024.
31. By failing to immediately notify the SERC of the release of a RQ of an extremely hazardous substance from the Facility on March 21, 2024, Respondents violated EPCRA Section 304, 42 U.S.C. § 11004.

Count III

(Failure to Comply with Process Safety Information Requirements)(CAA § 112(r))

32. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
33. Under 40 C.F.R. § 68.65, an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must complete a compilation of written process safety information, including information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. Under 40 C.F.R. § 68.65(d)(2)-(3), the owner or operator must ensure and document that equipment in the process is designed and maintained in compliance with recognized and generally accepted good engineering practices ("RAGAGEP") or determine and document that equipment that deviates from RAGAGEP is designed, maintained, inspected, tested, and operating in a safe manner.

34. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to document that the ammonia refrigeration room door complied with RAGAGEP or was otherwise designed, maintained, inspected, tested, and operating in a safe manner during the March 21, 2024 release incident. Respondents also failed to document that safety systems for the Surge Drum and Versa Pilot Receiver complied with RAGAGEP or were otherwise designed, maintained, inspected, tested, and operating in a safe manner from before October 1, 2021 to October 3, 2024.
35. Accordingly, EPA alleges that by failing to document that various equipment complied with RAGAGEP or was otherwise designed, maintained, inspected, tested, and operating in a safe manner between October 1, 2021 and October 3, 2024, Respondents violated the process safety information requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.65(d)(2)-(3).

Count IV

(Failure to Comply with Process Hazard Analysis Requirements)(CAA § 112(r))

36. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
37. Under 40 C.F.R. § 68.67(a), an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must perform a process hazard analysis ("PHA") on processes covered by CAA Section 112(r), 42 U.S.C. § 7412(2), that identifies, evaluates, and controls the hazards involved in the process. Under 40 C.F.R. § 68.67(e), owners or operators shall establish a system to promptly address PHA findings and recommendations.
38. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to address the hazards associated with the brine chiller process and did not resolve their 2022 PHA recommendations between November 1, 2022 and October 3, 2024.
39. Accordingly, EPA alleges that by failing to address the hazards associated with the brine chiller and resolve the 2022 PHA recommendations for the chiller at the Facility between November 1, 2022 and October 3, 2024, Respondents violated the PHA requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.67(a) and 68.67(e).

Count V

(Failure to Develop, Implement, and Update Adequate Operating Procedures)(CAA § 112(r))

40. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
41. Under 40 C.F.R. § 68.69(a), an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. Under 40 C.F.R. § 68.69(c), the owner or operator must annually certify that its operating procedures are current and accurate.
42. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to include adequate instructions for steps to correct deviations in compressor startup operating procedures between October 1, 2021 and October 3, 2024; address the consequences of deviation and steps required to correct or avoid deviating from the operating limits of the RC1 compressor between June 27, 2022 and October 3, 2024; address health and safety considerations of a covered compressor-related process between January 2, 2024 and October 3, 2024; and update safety systems to ensure they reflected current operating practices at the Facility between December 1, 2023 and October 3, 2024.
43. Accordingly, EPA alleges that by failing to develop, implement, and update adequate operating procedures at the Facility between October 1, 2021 and October 3, 2024, Respondents violated the operating procedures requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.69(a), (c).

Count VI

(Failure to Comply with Training Documentation Requirements)(CAA § 112(r))

44. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
45. Under 40 C.F.R. § 68.71(a), each employee involved in operating a process, and each employee before being involved in operating a newly assigned process at a facility subject to the Program 3 requirements of CAA § 112(r)(7), must be trained in an overview of the process and in the operating procedures, including specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. In lieu of initial training, an owner or operator may certify in writing that employees involved in operating a process on June 21, 1999, have the required knowledge, skills, and abilities as specified in the operating procedures. Under 40 C.F.R. § 68.71(b), each employee involved in operating a process shall be provided refresher training at least every three years, and more often if

necessary, to assure that the employee understands and adheres to the current operating procedures of the process.

46. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to document that the maintenance manager present at the Facility during the March 21, 2024 release incident received any initial training on the operating procedures before being involved in a newly assigned process. EPA also determined that Respondents failed to adequately document that the Facility employees involved in the operating process received refresher training every three years to assure understanding of current operating procedures between March 21, 2024 and June 3, 2024.
47. Accordingly, EPA alleges that by failing to adequately document the Facility's compliance with the initial and refresher training requirements between March 21, 2024 and June 3, 2024, Respondents violated the training requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.71(a)-(b).

Count VII
(Failure to Ensure Mechanical Integrity)(CAA § 112(r))

48. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
49. Under 40 C.F.R. § 68.73(e), an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must correct any deficiencies in process equipment that are outside acceptable limits, as defined by the process safety information in 40 C.F.R. § 68.65, before further use or in a safe and timely manner to assure safe operation.
50. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to replace the gasket between the piping flange and oil separator vessel between January 2, 2024 and October 3, 2024; failed to address 87 out of 108 areas of concern for equipment deficiencies identified in the 2020 mechanical integrity audit between December 11, 2021 and October 3, 2024; and failed to maintain an operational ventilation system in the machinery room at the Facility on the day of the March 21, 2024 release incident.
51. Accordingly, EPA alleges that by failing to correct deficiencies in equipment that were outside acceptable limits before further use between December 11, 2021 and October 3, 2024, Respondents violated the mechanical integrity requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(e).

Count VIII

(Failure to Comply with Management of Change Requirements)(CAA § 112(r))

52. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
53. Under 40 C.F.R. § 68.75, an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and changes to stationary sources to affect a covered process.
54. Based upon the information obtained during EPA’s investigation, EPA determined that Respondents failed to complete management of change forms for the oil-pot changeout and compressor replacement projects between July 23, 2022 and October 3, 2024.
55. Accordingly, EPA alleges that by failing to establish and implement their written procedures to manage changes affecting the process safety information at the Facility between July 23, 2022 and October 3, 2024, Respondents violated the management of change requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.75(a).

Count IX

(Failure to Comply with Pre-Startup Safety Review Requirements)(CAA § 112(r))

56. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
57. Under 40 C.F.R. § 68.77(a), an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information. Under 40 C.F.R. § 68.77(b), the pre-startup review shall confirm that prior to introduction of regulated substances to a process, construction and equipment is in accordance with design specifications; safety, operating, maintenance, and emergency procedures are in place and are adequate; modified stationary sources meet the requirements contained in management of change, 40 C.F.R. § 68.75; and training of each employee involved in operating a process has been completed.
58. Based upon the information obtained during EPA’s investigation, EPA determined that Respondents failed to adequately perform a pre-startup safety review for the VERSA RC-1 compressor rebuild at the Facility on January 6, 2024, which changed the compressor type and its operating limits.

59. Accordingly, EPA alleges that by failing to adequately perform a pre-startup safety review for the compressor rebuild at the Facility on January 6, 2024, Respondents violated the pre-startup safety review requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.77.

Count X
(Failure to Comply with Compliance Audit Requirements)(CAA § 112(r))

60. Paragraphs 1 through 23, above, are incorporated herein by this reference as if they were set forth here in their entirety.
61. Under 40 C.F.R. § 68.79(d), an owner or operator of a facility subject to the Program 3 requirements of CAA § 112(r)(7) must promptly determine and document an appropriate response to each of the findings of a compliance audit and document that deficiencies have been corrected.
62. Based upon the information obtained during EPA's investigation, EPA determined that Respondents failed to promptly determine and document appropriate responses for 24 recommendations in the Facility's 2019 compliance audit from October 1, 2021 to October 3, 2024 and 35 findings in the Facility's 2022 compliance audit from June 19, 2023 and October 3, 2024.
63. Accordingly, EPA alleges that by failing to promptly determine and document appropriate responses to recommendations and findings in the Facility's 2019 and 2022 compliance audits between October 1, 2021 and October 3, 2024, Respondents violated the compliance audit requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d).

F. CIVIL PENALTY

64. Respondents agree to pay a civil penalty in the amount of ONE HUNDRED TWENTY-FOUR THOUSAND, SEVEN HUNDRED THIRTEEN DOLLARS (\$124,713) ("Assessed Penalty") within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO as defined in Section M, below, is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.
65. Respondents agree to pay the Assessed Penalty in two separate payments of the CERCLA portion of the penalty and the EPCRA and CAA portion of the penalty, as follows:
- a. The CERCLA portion of the penalty totals EIGHT THOUSAND, FOUR HUNDRED EIGHTY-NINE DOLLARS AND FIFTY CENTS (\$8,489.50).

- b. The EPCRA and CAA portion of the penalty total ONE HUNDRED SIXTEEN THOUSAND, TWO HUNDRED TWENTY-THREE DOLLARS AND FIFTY CENTS (\$116,223.50).

66. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

67. When making a payment, Respondents shall:

- a. Identify every payment with Respondents' names and the docket number of this Agreement.
- b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve proof of such payment to the following persons via electronic mail:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
R9HearingClerk@epa.gov

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

and

U.S. Environmental Protection Agency
Cincinnati Finance Department
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondents' names.

68. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the applicable IRS underpayment rate; any lower rate would fail to provide Respondents adequate incentive for timely payment.
 - b. Handling Charges. Respondents will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondents fail to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
69. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

70. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
71. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

G. ADMISSIONS AND WAIVERS OF RIGHTS

72. In accordance with 40 CFR § 22.18(b), for the purpose of this proceeding, Respondents: (a) admit the jurisdictional allegations of this CA/FO; (b) neither admit nor deny specific factual allegations contained in this CA/FO; (c) consent to the assessment of the civil penalty set forth in Section F above and to any conditions specified in this CA/FO; and (d) waive any right to contest the allegations and their right to appeal the final order accompanying this consent agreement. By signing this Consent Agreement, Respondents waive any rights or defenses that Respondents have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the final order accompanying the consent agreement.

H. CERTIFICATION OF COMPLIANCE

73. In executing this CA/FO, Respondents certify under penalty of law to EPA that the Facility was shut down permanently on October 3, 2024, and that Respondents are therefore no longer subject to CAA Section 112(r), 42 U.S.C. § 7412(r), and its implementing regulations, that formed the basis for the violations alleged in this CA/FO, with respect to the Facility. As such, Respondents certify under penalty of law to EPA that they are in full compliance with CAA Section 112(r), 42 U.S.C. § 7412(r), and its implementing regulations with respect to the Facility.

I. RESERVATION OF RIGHTS

74. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondents' liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
75. 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 Respondents' obligations under any applicable federal, state or local laws, regulations, or permits.

J. OTHER CLAIMS

76. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

77. This CA/FO can be signed in counterparts.

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

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

80. EPA and Respondents consent to entry of this CA/FO without further notice.

81. By signing this CA/FO, Respondents acknowledge that this CA/FO will be available to the public and agree that this CA/FO does not contain any confidential business information or personally identifiable information.

82. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondents shall complete the following actions as applicable:

- a. Respondents shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

- b. Respondents shall therein certify that their completed IRS Form W-9 includes Respondents' correct TIN or that Respondents have applied and are waiting for issuance of a TIN;
- c. Respondents shall email their completed Form W-9 to Jessica Chalifoux in EPA's Cincinnati Finance Department at chalifoux.jessica@epa.gov, on or before the date the Respondents' penalty payment is due, pursuant to Paragraph 64, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondents have certified in their completed IRS Form W-9 that they do not yet have a TIN but have applied for a TIN, Respondents shall provide EPA's Cincinnati Finance Division with Respondents' TIN, via email, within five (5) days of Respondents' receipt of a TIN issued by the IRS.

L. EFFECTIVE DATE

83. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CA/FO ("Effective Date") shall be 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.

In the Matter of Tropicale Foods, LLC; and PLM Operations, LLC
Consent Agreement and Final Order

IT IS SO AGREED.

FOR RESPONDENT TROPICALE FOODS, LLC:

September 10, 2026

Date

Tony Jones

Tony Jones

Chief Operating Officer, Tropicale Foods LLC

In the Matter of Tropicale Foods, LLC; and PLM Operations, LLC
Consent Agreement and Final Order

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2026.09.17
09:01:31 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX