

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

** FILED **
25FEB2019 - 04:17PM
U.S.EPA - Region 09

IN THE MATTER OF:)

E. & J. Gallo Winery)
5610 East Olive Avenue)
Fresno, CA 93728)

Respondent.)
_____)

Docket No.
CAA(112r)-09-2019-0024

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

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

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

2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and its implementing regulations.

3. The Parties agree that settling this action without filing a complaint or adjudication of any issue of fact or law is in their respective best interest and the public interest.

B. GENERAL ALLEGATIONS

4. Respondent owns and operates the facility located at 5610 East Olive Avenue, Fresno, California, 93727 ("Facility"). Respondent crushes grapes to produce wine, distilled spirits and juice for concentrate at its Facility. These products are stored prior to shipment to other facilities for further packaging and distribution.
5. In September and November 2015, EPA performed inspections of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.
6. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
7. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.
8. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).
9. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to Regional Administrators with EPA delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated this authority with respect to enforcement of Section 112(r) of the CAA, 42

U.S.C. § 7412(r), to the Director of the Superfund Division, as well as the Director of the Enforcement Division, Region IX, with delegation R9 1265.05A, dated February 11, 2013.

10. On March 29, 2018, 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. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

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

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

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

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

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

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

C. EPA'S ALLEGED VIOLATIONS

COUNT I

(failure to comply with management requirements)

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

18. 40 C.F.R. § 68.15(c) requires that when owners or operators assign responsibility for implementing individual requirements of Part 68 to persons other than the person identified under paragraph § 68.15(b), owners or operators shall document the names or positions of these people and the lines of authority shall be defined through an organization chart or similar document.

19. EPA determined that Respondent did not adequately document its management system with an organization chart or other similar document that sufficiently shows and assigns responsibility for implementing individual requirements of the RMP.

20. By failing to comply with management requirements, Respondent violated 40 C.F.R. § 68.15(c).

COUNT II

(failure to comply with hazard assessment requirements)

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

22. 40 C.F.R. § 68.39 requires that owners or operators maintain the following records on the offsite consequence analyses (a) for worst-case scenarios, assumptions and parameters used, and the rationale for selection; (b) for alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios.

23. 40 C.F.R. § 68.36(a) requires that owners or operators review and update the offsite consequence analyses at least once every five years.

24. At the time of the inspection, Respondent documented its offsite consequence analysis in a September 5, 2004 report. In 2009, Respondent documented that Respondent reviewed the 2004 offsite consequence analysis and determined that a revision was not required. Respondent revised its offsite consequence on September 9, 2016 and updated it on May 31, 2017.

25. EPA determined that from 2004 to September 2016, Respondent did not maintain adequate records that addressed various factors described in 40 C.F.R. § 68.25(i) - Worst Case Scenario and 40 C.F.R. § 68.28(b) - Alternative Release Scenario.

26. EPA determined that Respondent did not update its offsite consequence analysis every 5 years to reflect (a) the single vessel at the Facility with the greatest amount of regulated substance, and (b) the updated 2010 census data. As such, EPA determined that Respondent should have updated the analysis in 2014.

27. By failing to maintain records that addressed the Worst-Case Scenario and Alternative Release Scenario and by failing to update its offsite consequence analysis, Respondent violated 40 C.F.R. §§ 68.36(a) and 68.39.

COUNT III
(failure to comply with process safety requirements)

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

29. 40 C.F.R. § 68.65(c)(iii) requires that owners or operators complete a compilation of written process safety information that includes the maximum intended inventory.

30. EPA determined that Respondent's process safety information did not provide the correct maximum intended inventory of ammonia for the eight processes at the Facility.

31. 40 C.F.R. § 68.65(d)(1)(ii) requires that information pertaining to the equipment in the process shall include piping and instrument diagrams (P&IDs).

32. EPA determined that the P&ID for Plant 20 showed the high-pressure liquid ammonia line on the high-pressure receiver color coded incorrectly and the P&IDs for Plant I did not show the new piping into the diffusion tank.
33. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.
34. EPA determined that some of the anhydrous ammonia pipes, valves and equipment in the Facility were not labeled in accordance with industry standards as reflected in Section 5.14.5 of the International Institute of Ammonia Refrigeration ("IIAR")-2 -2014 "Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems" (specifies that ammonia piping mains, headers and branches to be identified) and Section 4.2 of the IIAR Bulletin No. 114 (2014) "Guidelines for: Identification of Ammonia Refrigeration Piping and System Components" (specifies that component markers bear the name of the equipment they identify, e.g., RECIEVER, ACCUMULATOR, etc.), or equivalent.
35. During the inspection, EPA observed portable stairs near the high- pressure receiver associated with the king valve (or main shut off or isolation valve) in Plant 20 and that the Tower 2 king valve was not reachable from the ground because it was blocked by permanent equipment. EPA also determined that the king valve in Plant 20 was not labeled. Section 6.3.3.2 of the American National Standards Institute ("ANSI")/IIAR 2-2014, specifies that at a minimum isolation valves are to be "directly operable from the floor or chain operated from a permanent work surface"). Section 4.10.3 of the IIAR Bulletin No. 109 (1997) "IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System," specifies the main shut-off (e.g., a king valve)

of the ammonia system to be readily accessible and identified with a prominent sign having letters sufficiently large to be easily read. Section 5.14.3 of the ANSI/IIAR-2-2014, specifies that "valves required for emergency shutdown of the system shall be clearly and uniquely identified at the valve itself....".

36. EPA determined that spilled grape press liquid on the ground and equipment in Plant I was not managed in accordance with industry standards, as reflected in Section 11.6 of ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers 15-2016 "Safety Standard for Refrigeration Systems" (specifies that refrigeration systems are maintained a clean condition, free from accumulation of oily dirt, waste, and other debris, and kept accessible at all times).

37. By failing to maintain accurate information pertaining to the maximum intended inventory, failing to maintain P&IDs to accurately reflect equipment in the process, and failing to document that equipment complies with recognized and generally accepted good engineering practices, Respondent violated 40 C.F.R. § 68.65.

COUNT IV

(failure to comply with process hazard analysis requirements)

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

39. 40 C.F.R. § 68.67(e) requires that owners or operators establish a system to promptly address the findings and recommendations in the process hazard analysis; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed.

40. EPA determined that Respondent did not adequately address all the findings and recommendations identified in the Process Safety Management/RMP Combined Action Item List for the 2011, 2012, and 2014 Process Hazard Analyses ("PHA") in a timely manner.

41. By failing to promptly address PHA findings and recommendations, Respondent violated 40 C.F.R. § 68.67(e).

COUNT V

(failure to comply with operating procedure requirements)

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

43. 40 C.F.R. § 68.69(a)(2)-(4) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements, (2) operating limits, (3) safety and health considerations, and (4) safety systems and their functions.

44. EPA determined that (1) Respondent's written emergency shutdown procedure for the Facility failed to provide clear instructions for safely conducting activities; and (2) Respondent's written emergency operations procedure for the Facility failed to include operating limits, safety and health considerations and safety systems and their functions.

45. 40 C.F.R. § 68.69(c) requires that owners or operators review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources; and further certify annually that these operating procedures are current and accurate.

46. EPA determined that Respondent did not certify its operating procedures in 2013, 2014 and 2016.

47. By failing to adequately comply with operating procedures requirements, Respondent violated 40 C.F.R. § 68.69.

COUNT VI
(failure to comply with mechanical integrity requirements)

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

49. 40 C.F.R. § 68.73(d)(2) requires that owners or operators follow RAGAGEP for inspection and testing procedures.

50. EPA determined that Respondent had not replaced or inspected and tested (i.e., recertified) some of the Facility's pressure relief devices within a five-year period from installation consistent with RAGAGEP, as reflected in IIAR Bulletin 110 "Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems" Section 6.6.3.1 (2007) (specifies that "Pressure relief devices shall be replaced or recertified ... every five (5) years from the date of installation").

51. 40 C.F.R. § 68.73(e) requires that owners or operators correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

52. EPA determined that Respondent had not corrected some of the deficiencies identified in the 2013 Mechanical Integrity ("MI") Assessment Report that were outside acceptable limits, in a safe and timely manner.

53. By failing to comply with mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73.

COUNT VII
(failure to comply with compliance audit requirements)

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

55. 40 C.F.R. § 68.79(a) (Compliance Audits) requires that owners or operators certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

56. Respondent documented its most recent compliance audits in reports dated May 11, 2011 and November 14, 2014.

57. EPA determined that Respondent did not certify that compliance was evaluated by May 11, 2014, three years after the May 11, 2011 Compliance Audit.

58. 40 C.F.R. § 68.79(d) requires that owners or operators promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

59. EPA determined that Respondent did not document that some of the deficiencies identified in the 2011 and 2014 compliance audits have been promptly corrected.

60. By failing to certify that compliance was evaluated every three years and by failing to promptly determine and document an appropriate response to each of the compliance audits, Respondent violated 40 C.F.R. § 68.79.

COUNT VIII

(failure to comply with incident investigation requirements)

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

62. 40 C.F.R. §§ 68.81 (a), (d), and (g) require that the owner or operator investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated

substance, prepare a report at the conclusion of the investigation, and retain the report for five years.

63. EPA determined that Respondent did not investigate and prepare a report for the October 9, 2014 ammonia release.

64. 40 C.F.R. §§ 68.81(b) and (d)(2) requires that owners or operators initiate an incident investigation as promptly as possible, but not later than forty-eight hours following the incident and prepare a report at the conclusion of the investigation which includes at a minimum the date the investigation began.

65. EPA determined that Respondent did not include the date investigation began on its incident report for the ammonia releases that occurred on October 1, 2015 and May 10, 2016.

66. By failing to adequately investigate and document the above-described incidents, Respondent violated 40 C.F.R. § 68.81.

COUNT IX

(failure to comply with contractor requirements)

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

68. 40 C.F.R. § 68.87(b)(5) requires that owners or operators periodically evaluate the performance of their contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

69. EPA determined that Respondent did not periodically evaluate the performance of their main contractor in fulfilling their obligations.

70. By failing to comply with contractor evaluation requirements, Respondent violated 40 C.F.R. § 68.87(b)(5).

COUNT X

(failure to comply with emergency response program requirements)

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

72. 40 C.F.R. § 68.95(a) requires that owners or operators develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (1) an emergency response plan, which shall be maintained at the stationary source and contain documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and (2) procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

73. EPA determined that Respondent did not document in its emergency response plan for the Facility: (1) the proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and (2) procedures for the use of emergency response equipment and for its inspection, testing and maintenance (e.g., personal protective equipment and respirators).

74. By failing to comply with emergency response program requirements, Respondent violated 40 C.F.R. § 68.95(a).

D. CIVIL PENALTY

75. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS (\$57,839.00)**, as the civil penalty for the violations alleged herein.

76. 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 was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

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

78. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby consents to the assessment of the stated civil penalty and to any conditions specified in the CA/FO and waives any right to contest the allegations and its right to appeal the final order accompanying this CA/FO pursuant to 40 C.F.R. section 22.18(b)(2).

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

F. PARTIES BOUND

80. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I), the SEP has been completed, including the Final SEP Completion Report, under Section H, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

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

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

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

G. PAYMENT OF CIVIL PENALTY

84. Respondent consents to the assessment of and agrees to pay civil penalties of **FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS (\$57,839.00)** in settlement of the civil claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

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

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

Regular Mail:

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

In the Matter of E. & J. Gallo Winery
Consent Agreement and Final Order

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

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

Wire Transfers:

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

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

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

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White (301-887-6548)

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pav.gov

Enter "sfol.l" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter,

In the Matter of E. & J. Gallo Winery
Consent Agreement and Final Order

indicating Respondent's name, the case title, and docket number, to both the Regional Hearing Clerk (via hard copy) and Cynthia Steiner (via hard copy or electronic mail) at:

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

And

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

or

Steiner.Cynthia@epa.gov

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

88. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall be treated by Respondent or any other person or entity for federal, state or local taxation purposes, in accordance with the most current federal, state and local tax laws, including but not limited to prohibitions against deductions.

H. SUPPLEMENTAL ENVIRONMENTAL PROJECT

89. As a condition of settlement, Respondent shall perform the supplemental environmental project ("SEP") specified in this Section. Performance of the tasks detailed in this Section shall

constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements. The SEP is to install and integrate new controls and equipment to allow for remote shutoff of each ammonia refrigeration system with a computer elsewhere in the Facility. A total of eighteen (18) solenoid valves (“SVs”) will be installed on the ammonia high pressure liquid (HPL) line of each high-pressure receiver (“HPR”). These SVs will be integrated into existing controls and equipment to allow for remote shut off. Each SV will be installed in series with an existing HPR hand isolation valve. In addition, eight (8) existing emergency shutoff switches (“E-Stops”) will be replaced with new E-Stops: one for each ammonia refrigeration system. The functionality of the new E-Stops will be upgraded to allow for remote shutoff of the ammonia refrigeration system compressors. While equipped with high pressure automatic shut off equipment, the current system configuration, without the SEP equipment/control modifications, requires that an operator and/or emergency responder manually close the hand isolation valve(s) (or king valve(s)) and press an E-Stop to shut down an ammonia refrigeration system in certain emergency situations.

90. The SEP modifications described in Paragraph 89 will have the following environmental and safety benefits: allow for remote shut off control of the ammonia refrigeration systems for maintenance and/or emergency events; standardize the location of the E-stops in the Facility; and decrease emergency shutdown response time if ammonia refrigeration equipment leaks thus potentially reduce human exposure and the amount of ammonia released to the environment. The SEP modifications described in Paragraph 89 are not required by 40 C.F.R. Part 68 or currently reflected in RAGAGEP references.

91. On or before August 1, 2020, Respondent shall complete the tasks described below in accordance with relevant industry codes and standards and regulations, including 40 C.F.R. Part

68. Any modifications to the design elements below that may be required due to unforeseen field conditions shall be substantially equivalent and be consistent with industry standards, and shall not reduce the safety benefits of the intended project:

- (1) Prior to equipment procurement, document Management of Change which includes, at a minimum, updating the P&ID, and modifying or revalidating the PHA;
- (2) Install eighteen (18) SV groups on each HPR outlet HPL line (SV groups consist of solenoid valves and strainer assemblies, downstream isolation valves; service drain valves, and strainer drain valves) and replace tamper resistant E-stops on each of the Facility's eight (8) ammonia refrigeration systems;
- (3) Integrate electrical and controls service, including integration of the new E-stops and SVs with existing computer controls and programming updates.
- (4) Prior to adding ammonia to the system, complete Pre-Startup Safety Review which includes, at a minimum, updating all related operating procedures and conducting training on the modified emergency shutdown procedure; and
- (5) Update the Facility's RMP documentation including, Process Safety Information and Mechanical Integrity program, Emergency Response Program, and other documentation as required by 40 C.F.R. Part 68.

92. Respondent shall expend at least THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) to complete the SEPs described herein.

93. Within forty-five days (45) days of completion of the tasks outlined in paragraphs 89 through 91, above, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP

as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to (i) invoices, purchase orders, checks or receipts, and correspondence with its contractor; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the SEP; and (iii) certification that the projects have been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

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

Cyntia Steiner (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Steiner.Cyntia@epa.gov

95. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section I.

96. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) that all cost information provided to EPA in connection with

EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000); (ii) that, as of the date of this Agreement, 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; (iii) 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 Agreement; (iv) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (v) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (vi) that Respondent will comply with the most current federal, state and local tax laws, including but not limited to prohibitions against capitalization and deductions of any costs or expenditures incurred in performing the SEP; and (vii) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this Agreement.

97. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of Respondent's 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 Environmental Protection Agency to enforce federal laws."

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

98. In the event Respondent fails to meet the civil penalty payment requirement set forth in paragraphs 84 and 85 of this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and ONE THOUSAND

FIVE HUNDRED DOLLARS (\$1,500) 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.

99. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) less any stipulated penalties already paid pursuant to Paragraph 102 for failure to submit the SEP Completion Report described in Paragraph 93.

100. If Respondent demonstrates that the SEP tasks described in Section H were completed, but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Section H, Respondent shall pay a stipulated penalty to the United States that is the difference between THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) and the actual costs incurred by Respondent toward completion of the tasks described in Section H.

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

102. For failure to submit the SEP Completion Report required by Section H, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent

pursuant to this paragraph shall not exceed of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000).

103. 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 G of this CA/FO.

104. 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 the CAA and its implementing regulations.

105. The payment and treatment of stipulated penalties specified in this Section shall comply with the with the most current federal, state and local tax laws, including but not limited to, prohibitions against deductions.

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

J. RESERVATION OF RIGHTS

107. Except for matters resolved in this CA/FO, including violations alleged in Section C of this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or

limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory or common law enforcement authority of the United States for matters not resolved by this CA/FO or with respect to terms of this CA/FO with which Respondent does not comply.

108. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal or federal laws and regulations.

109. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

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

K. MISCELLANEOUS

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

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

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

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

L. EFFECTIVE DATE

In the Matter of E. & J. Gallo Winery
Consent Agreement and Final Order

115. 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 has been approved and issued by the Regional Judicial Officer and is filed with the Regional Hearing Clerk.

In the Matter of E. & J. Gallo Winery
Consent Agreement and Final Order

IT IS SO AGREED.

Respondent E. & J. Gallo Winery

DATE: 1/8/19

BY: 
Michael Roland
Vice President, E. & J. Gallo Winery

United States Environmental Protection Agency, Region 9

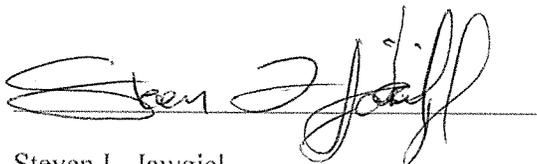
DATE: 7 FEB 2019

BY: 
Enrique Manzanilla
Director, Superfund Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA (112r)-09-2019-00~~24~~) be entered and that Respondent pay a civil penalty FIFTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS (\$57,839) due within thirty (30) days from the Effective Date of this CA/FO, and implement the Supplemental Environmental Project described in Section H of this CA/FO, in accordance with all terms and conditions of this CA/FO.

~~02~~ / 25
Date



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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *E. & J. Gallo Winery*. (CAA(112r)-09-2019-~~0024~~), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent -

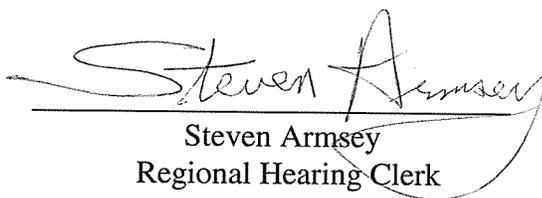
Mr. Michael Roland
E. & J. Gallo Winery
c/o Peter Ton, Esq.
Wactor & Wick L.L.P
3640 Grand Avenue, Suite 200
Oakland, CA 94610

HAND DELIVERED:

Complainant -

Rebekah Reynolds, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Date: 2019-02-25


Steven Armsey
Regional Hearing Clerk
EPA, Region 9