

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF:

Nor-Cal Beverage Company, Inc.
2286 Stone Blvd.
West Sacramento CA 95691

Respondent

Docket No. EPCRA-09-2008- 00 1 3
CERCLA-09-2008- 00 0 2

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

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent, Nor-Cal Beverage Company, Inc. is an active corporation organized under the laws of the state of California.
2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated the following statutes and their implementing regulations: Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6 require the person in charge of a vessel or an offshore or onshore facility to immediately notify the National Response Center ("NRC") as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity ("RQ") during a 24-hour period.

12. The Facility is an "onshore facility" as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).
13. At all times relevant to this CA/FO, Respondent has been in charge of the Facility.
14. Ammonia is designated as a "hazardous substance" in Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 CFR § 302.4, Table 302.4, and Appendix A to Section 302.4. The RQ for ammonia is 100 pounds.
15. Beginning at approximately 10 pm, on May 7, 2007, approximately 800 pounds of ammonia leaked or was emitted into the environment from the Facility within a 24-hour period. The leaking or emitting of ammonia from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
16. Respondent had actual or constructive knowledge that the release exceeded the RQ soon after the release began at 10 pm on May 7, 2007.
17. At 8:54 am, on May 8, 2007, over 10 hours after Respondent knew or should have known that there had been an ammonia release at the Facility in excess of the RQ, Respondent notified the NRC of the release.
18. Respondent's failure to immediately notify the NRC of the May 7, 2007 release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

COUNT II

(Failure to immediately notify the SERC and the LEPC)

19. Paragraphs 1 through 9 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 1049(4).
21. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
22. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
23. Ammonia is designated as an "extremely hazardous substance" in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 CFR § 355, Appendices A and B. The RQ for ammonia is 100 pounds.
24. Ammonia is a "hazardous chemical" as defined by Sections 329(5) and 311(e) of EPCRA, 42 U.S.C. §§ 11049(5) and 11021(e).

prior history of violations, its degree of culpability, and any economic benefit; and such other matters as justice may require, EPA proposes that Respondent be assessed a civil penalty of **TWENTY-SIX THOUSAND DOLLARS (\$26,000)** for the violations alleged herein.

F. ADMISSIONS AND WAIVERS

34. For 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 and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609; Section 325 of EPCRA, 42 U.S.C. § 11045; and 40 CFR §§ 22.4 and 22.39. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
35. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or Section 325 of EPCRA, 42 U.S.C. § 11045, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

36. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute a release and full settlement of the violations alleged herein.
37. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
38. Until termination of this CA/FO, 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.

Each check shall reference the name and corresponding CERCLA or EPCRA docket number for this CA/FO, and shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO. The cover letter and civil penalty shall be sent by certified mail, return receipt requested. Copies of the transmittals shall be sent to:

Janice Witul
Emergency Prevention & Preparedness Section (SFD-9-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

and

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

43. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the effective date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the effective date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
44. The civil penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

45. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. 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.
46. In addition to the interest and per annum penalties described in Paragraph 43, in the event that Respondent fails to pay the full amount of the penalty within the time specified in

such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty shall resolve Respondent's liability for the violations and facts alleged herein.

L. OTHER CLAIMS

55. 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.

M. MISCELLANEOUS

56. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
57. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
58. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

59. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

9-9-08



Don Deary
President
Nor-Cal Beverage Company, Inc.

18 September 2008



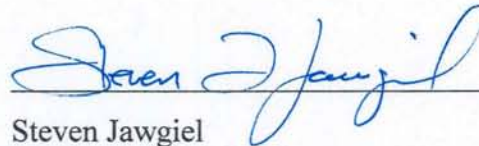
For

Keith Takata
Director
Superfund Division
U.S EPA, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2008-0013, CERCLA-09-2008-0002) be entered, and that Respondent pay a civil penalty in the amount of **TWENTY-SIX THOUSAND DOLLARS (\$26,000)**.

09/23/08



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

CERTIFICATE OF SERVICE

Docket No. CERCLA - 09-2008- 0002
EPCRA - 09-2008- 0013

I hereby certify that the original copy of the foregoing CAFO with the Docket numbers referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Don Deary, President
Nor-Cal Beverage Company, Inc.
2286 Stone Blvd.
West Sacramento CA 95691

SEP 24 2008

Date



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