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U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

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Region IX  
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF:

Rousseau Farming Company;  
Respondent.

<sup>09</sup>  
Docket Nos.  
EPCRA-~~7~~-2007- 0033  
CERCLA-~~7~~-2007- 0006  
<sup>09</sup>

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

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045; Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Rousseau Farming Company, a corporation organized under the laws of the state of Arizona.
2. This Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO") simultaneously commences and concludes this proceeding, wherein EPA

alleges that Respondent violated Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021 and 11022, and Section 103 of CERCLA, 42 U.S.C. § 9603, and their implementing regulations.

**B. STATUTORY AND REGULATORY FRAMEWORK**

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6 require the owner or operator 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 during a 24-hour period.
4. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 C.F.R. § 355.40 require the owner or operator of a facility that produces, uses, or stores hazardous chemicals to immediately notify the appropriate state and local emergency planning and response agencies when (a) an extremely hazardous substance is released from the facility and (b) the release requires a CERCLA § 103(a) notification. The owner or operator must immediately provide the required notice to the community emergency coordinator for the local emergency planning committee ("LEPC") for any area that is affected by the release and to the state emergency response commission ("SERC") for any state that is affected by the release.
5. Section 311 of EPCRA, 42 U.S.C. § 11021, and 40 C.F.R. § 370.21 provide that the owner or operator of a facility is required to submit a Material Safety Data Sheet ("MSDS"), or an alternative MSDS reporting list, to the LEPC, SERC, and fire department with jurisdiction over the facility, for each hazardous chemical present at the facility, according to the minimum threshold schedule provided in paragraph (b) of 40 C.F.R. § 370.20.
6. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25 require the owner or operator of a facility that is required to prepare or have available an MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory

form containing information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 C.F.R. § 370.20(b). This inventory must be submitted by March 1 of each year to the SERC, LEPC, and fire department having jurisdiction over the facility. 40 C.F.R. § 370.25.

**C. GENERAL ALLEGATIONS**

7. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C § 9603(a).
8. The Administrator of EPA delegated the enforcement authority of Section 109 of CERCLA, 42 U.S.C. § 9609, to the EPA Regional Administrators by issuance of EPA delegation 14-31, dated May 11, 1994. The Regional Administrator of EPA Region IX further delegated this authority to the Director of the Superfund Division for EPA Region IX by issuance of regional delegation R9 1290.16.
9. Sections 325(b) and (c) of EPCRA, 42 U.S.C. §§ 11045(b) and (c), authorize the assessment of civil penalties for any violation of Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021 and 11022.
10. The Administrator of EPA delegated enforcement authority under EPCRA to the EPA Regional Administrators by issuance of EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator of EPA Region IX further delegated the authority to enforce Sections 302, 303, 304, 311, 312, 322, and 323 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11004, 11021, 11022, and 11043, to the Director of the Superfund Division for EPA Region IX by issuance of regional delegation R9 1290.18.
11. Respondent is, and at all times referred to herein was, a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
12. The real property, including improvements thereto, located at 9601 West Harrison Street, Tolleson, Arizona, within Maricopa County (the "Facility"), is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

13. The Facility is an "onshore facility" as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 101(18) and 101(9).
14. Respondent produced, used or stored ammonia at the Facility.
15. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility and has been in charge of the Facility.
16. Ammonia is designated as a "hazardous substance" pursuant to Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a); 40 C.F.R. § 302.4, Table 302.4; and Appendix A to § 302.4. Ammonia is also a "hazardous chemical" as defined by Sections 329(5) and 311(3) of EPCRA, 42 U.S.C. §§ 11049(5) and 11021(3). The reportable quantity for ammonia is 100 pounds.
17. Ammonia is designated as an "extremely hazardous substance" pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. Part 355, Appendices A and B.
18. At approximately 11:12 pm on November 26, 2006, anywhere from 610 to 1080 pounds of ammonia leaked or was emitted into the environment within a 24-hour period from the Facility.
19. The ammonia released from the Facility entered the ambient air.
20. 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) and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
21. On December 7, 2006, Respondent notified the NRC, SERC, and LEPC of the November 26, 2006, release of ammonia.
22. From 2001-2006, a daily average of 8,000 pounds of ammonia was present at the Facility.
23. On December 20, 2006, Respondent submitted Tier II inventory forms to the Arizona SERC, Maricopa County LEPC, and Tolleson Fire Department.
24. The Arizona State Emergency Response Commission is the SERC with jurisdiction over the Facility.
25. The Maricopa County LEPC is the LEPC with jurisdiction over the Facility.

26. The Tolleson Fire Department is the fire department with jurisdiction over the Facility.

**D. ALLEGED VIOLATIONS**

**COUNT I**

*(Failure to immediately notify the NRC)*

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.

28. Respondent was required to immediately report the release of ammonia to the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

29. Respondent had actual or constructive knowledge of the ammonia release at or around 11:30 pm on November 26, 2006.

30. At 09:54 am, on December 7, 2006, more than ten days after the incident, Respondent notified the NRC of the ammonia release at the Facility.

31. Respondent's failure to immediately notify the NRC of the release of ammonia from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

**COUNT II**

*(Failure to immediately notify the SERC)*

32. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.

33. Respondent was required to immediately report the release of ammonia to the SERC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

34. Respondent had actual or constructive knowledge of the ammonia release at or around 11:30 pm on November 26, 2006.

35. At 09:54 am, on December 7, 2006, more than ten days after the incident, Respondent notified the SERC of the ammonia release at the Facility.

36. Respondent's failure to immediately notify the SERC of the release of ammonia from the Facility is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**COUNT III**

*(Failure to immediately notify the LEPC)*

37. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. Respondent was required to report the release of ammonia to the LEPC under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
39. Respondent had actual or constructive knowledge of the ammonia release at or around 11:30 pm on November 26, 2006.
40. At 09:54 am, on December 7, 2006, more than ten days after the incident, Respondent notified the LEPC of the ammonia release at the Facility.
41. Respondent's failure to immediately notify the LEPC of the release of ammonia from the Facility is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**COUNT IV**

*(Failure to timely submit an MSDS)*

42. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
43. Respondent was required to prepare and have available an MSDS under 29 C.F.R. § 1910.1200(g), because Respondent was engaged in a business where chemicals are either used or distributed, or are produced for use or distribution.
44. As of December 2006, Respondent used ammonia at the Facility in quantities above the applicable thresholds established in 40 C.F.R. § 370.20(b).
45. As of December 2006, Respondent failed to submit an MSDS to the SERC, LEPC, and fire department within three months of receipt of ammonia at the Facility in an amount which exceeded the threshold established in 40 C.F.R. § 370.20(b) .

46. Respondent's failure to submit an MSDS to the SERC, LEPC, and fire department within three months of receipt of the ammonia at the Facility in an amount which exceeded the threshold established at 40 C.F.R. § 370.20(b) is a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

#### COUNT V

*(Failure to timely submit annual emergency and hazardous chemical inventory form)*

47. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
48. Between 2003 and 2006, Respondent was required to prepare and submit an annual emergency and hazardous chemical inventory form for ammonia pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.
49. Respondent failed to submit inventory forms, containing information on emergency and hazardous chemicals present at the Facility, to the SERC, LEPC and fire department on or before March 1 of 2004, 2005, and 2006.
50. Respondent's failures to submit inventory forms containing information on emergency and hazardous chemicals present at the Facility during calendar years 2003, 2004, and 2005 to the SERC, LEPC, and fire department on or before March 1 of 2004, 2005, and 2006, are each a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

#### **E. CIVIL PENALTY**

51. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), as adjusted by the Debt Collection Improvement Act of 1996, see 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each day a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, occurs after March 15, 2004. See Table 1 of 40 C.F.R. § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).
52. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), as adjusted by the Debt Collection Improvement Act of 1996, see 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each

day a violation of Section 304 of EPCRA, 42 U.S.C § 11004, occurs after March 15, 2004. See Table 1 of 40 C.F.R. § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).

53. Based on the facts alleged herein, and upon the factors set forth in the Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA ("EPCRA/CERCLA ERP"), including the nature, extent, and gravity of the violations, Respondent's ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, EPA proposes that Respondent be assessed, and Respondent agrees to pay **SIXTY-FIVE THOUSAND AND FORTY-FIVE DOLLARS (\$65,045)** as the civil penalty for the violations alleged herein. This penalty amount was calculated in accordance with the EPCRA/CERCLA ERP.

**F. ADMISSIONS AND WAIVERS**

54. 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 C.F.R. §§ 22.4 and 22.37. 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 and 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.
55. 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 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. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

56. As part of the settlement of this enforcement action, Respondent shall perform a Supplemental Environmental Project ("SEP"). Performance of the tasks set forth in this Section G. shall constitute satisfactory performance of the SEP.
57. Respondent shall purchase the emergency response equipment listed in Attachment A ("SEP Equipment") to be donated to the Tolleson Fire Department.
58. Respondent shall spend at least **FIFTEEN THOUSAND ONE HUNDRED FIVE DOLLARS and SEVENTY CENTS (\$15,105.70)** on the SEP Equipment.
59. Respondent shall purchase the SEP Equipment and donate the equipment to the Tolleson Fire Department within sixty (60) days of the Effective Date of this CA/FO.
60. Within ninety (90) days after the Effective Date of this CA/FO, Respondent shall certify to EPA in writing that Respondent has purchased the SEP Equipment and delivered the equipment to the Tolleson Fire Department and that the Tolleson Fire Department has received the SEP Equipment. At the same time, Respondent shall provide EPA an accounting showing the amount Respondent expended for purchase of the SEP Equipment, and submit to EPA substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts. The signatory for Respondent shall certify under penalty of law that this certification is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
61. In the event that Respondent publicizes the purchase and donation of the SEP Equipment, Respondent shall state in a prominent manner that the project is part of a settlement of an enforcement action by EPA.

62. The expenditures made by Respondent in implementing the SEP are, for purposes of federal law, neither tax-deductible nor eligible to be added to the basis of assets or property for depreciation purposes. Respondent shall not use any expenditure associated with the SEP to obtain favorable federal tax treatment.
63. Respondent certifies that Respondent is not required by any federal, state or local law or regulation to perform or develop the SEP; nor is Respondent required by agreement, grant or as injunctive relief in this or any other case (other than in this CA/FO) to perform or develop the SEP. Respondent further certifies that Respondent has not received, and will not receive, credit in any other action for the SEP. Lastly, Respondent certifies that Respondent will neither deduct nor capitalize SEP costs for federal income tax purposes.

**H. PARTIES BOUND**

64. This CA/FO shall apply to and be binding upon Respondent and the agents, successors and assigns of Respondent, 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 full settlement of the violations alleged herein.
65. 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. 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.
66. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to this CA/FO.

**I. CERTIFICATION OF COMPLIANCE**

67. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has fully complied with the requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11011, 11012 that formed the basis for the violations alleged in Section D above, and that the Facility is now in compliance with the relevant current reporting obligations under Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11011 and 11012.
68. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

**J. PAYMENT OF CIVIL PENALTY**

69. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **SIXTY-FIVE THOUSAND AND FORTY-FIVE DOLLARS (\$65,045)** in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of all claims for the violation of Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11011 and 11012, and Section 103 of CERCLA, 42 U.S.C. § 9603, alleged in Section D above.
70. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, by sending a certified or cashier's check in the amount of **SIXTY-FIVE THOUSAND AND FORTY-FIVE DOLLARS (\$65,045)**, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Region IX  
P.O. Box 371099M  
Pittsburgh, PA 15251

The check shall reference the caption and docket numbers of 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:

Richard Mednick (ORC-3)  
Associate Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

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

71. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay the penalty 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 twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.
  72. The 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.
  73. The expenditures made by Respondent in implementing the SEP are, for purposes of federal law, neither tax-deductible expenditures nor eligible to be added to the basis of assets or property for depreciation purposes. Respondent shall not use any expenditure associated with the SEP to obtain favorable federal tax treatment.
- K. DELAY IN PERFORMANCE / STIPULATED PENALTIES**
74. In addition to the interest and per annum penalties described above, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Paragraph 72, Respondent agrees to pay EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) for each day that default continues.
  75. Except as provided in Paragraph 76 and Paragraphs 78 to 81, in the event that Respondent fails to complete any task required by this CA/FO by the time required by this CA/FO,

Respondent shall pay stipulated penalties in the amount of ONE THOUSAND DOLLARS (\$1,000) for each day of delay.

76. Except as provided in Paragraph 79, in the event that Respondent fails to purchase the SEP Equipment for the Tolleson Fire Department in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of TWENTY THOUSAND DOLLARS (\$20,000).
77. If Respondent fails to purchase the SEP Equipment for the Tolleson Fire Department in accordance with the terms of this CA/FO, but Respondent (a) has made good faith and timely efforts to complete these tasks; and (b) certifies, with supporting documentation, that at least TWELVE THOUSAND DOLLARS (\$12,000) was expended on trying to complete these tasks, no stipulated penalty will apply.
78. If Respondent satisfactorily purchases the SEP Equipment for the Tolleson Fire Department, otherwise in accordance with the terms of this CA/FO, but Respondent spent less than FIFTEEN THOUSAND DOLLARS (\$15,000) on such purchases, Respondent shall pay a stipulated penalty of FIVE THOUSAND DOLLARS (\$5,000).
79. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Division Director, Superfund Division, EPA Region IX. The decision of the Division Director, Superfund Division, EPA Region IX is not reviewable in any forum.
80. All stipulated penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
81. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the

United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

82. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of the EPCRA/CERCLA penalty in Section J of this CA/FO.
83. All payments shall indicate the name of the Facility, Respondent's name and address, and the EPA CERCLA docket number assigned to this action.
84. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
85. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.
86. 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.
87. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

**L. RESERVATION OF RIGHTS**

88. EPA expressly reserves all rights and defenses that it may have.
89. 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. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609; and Section 325 of EPCRA, 42 U.S.C. § 11045. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under

EPCRA or CERCLA or any other statutory, regulatory or common law enforcement authority of the United States, except as otherwise set forth herein.

90. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of the obligation to comply with any applicable local, state or federal laws and regulations.
91. 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 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 proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.
92. 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.

**M. OTHER CLAIMS**

93. 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.

**N. MISCELLANEOUS**

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

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

IT IS SO AGREED,

26 Sept. 2007

Date

Will Rousseau for Will Rousseau

Will Rousseau  
President  
Rousseau Farming Company

SEPTEMBER 28, 2007

Date

Keith Takata for Keith Takata

Keith Takata  
Director  
Superfund Division  
United States Environmental Protection Agency,  
Region IX

FINAL ORDER

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO") in EPA Docket Nos. EPCRA ~~09-2007-~~ <sup>0033</sup> and CERCLA ~~09-2007-~~ <sup>0006</sup> be entered, and that Respondent pay a civil penalty in the amount of SIXTY-FIVE THOUSAND AND FORTY-FIVE DOLLARS (\$65,045), perform the Supplemental Environmental Project required by Section F of this CA/FO, and complete any and all tasks required by this CA/FO.

09/28/07

Date

  
\_\_\_\_\_  
Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency,  
Region IX

CERTIFICATE OF SERVICE

Docket No. EPCRA-09-2007-0033  
CERCLA-09-2007-0006

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

Will Rousseau  
President  
Rousseau Farming Company  
P.O. Box 100  
Tolleson, AZ 85353

SEP 28 2007

\_\_\_\_\_  
Date



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