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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX

2007 SEP 26 AM 9:26 REGIONAL HEARINGS CLERK

IN THE MATTER OF:
Dole Packaged Foods, LLC
7916 West Bellevue Rd
Atwater, California 95301
Respondent

Docket No. EPCRA-09-2007-0026
CERCLA-09-2007-0005
CAA-09-2007-0030
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; Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413; 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 is Dole Packaged Foods, LLC, a limited liability company 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); Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1); and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

B. STATUTORY AND REGULATORY FRAMEWORK

- 3. Section 103(a) of CERCLA, 42 U.S.C. § 9604(a), and 40 CFR § 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 ("RQ") during a 24-hour period.
4. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 CFR § 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 (1) an extremely hazardous substance is released from the facility and (2) 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 112(r)(7) of the CAA, 42 U.S.C. § 7412, and 40 CFR § 68.69 require the owner or operator of a stationary source, at which regulated substances are present in more than a threshold quantity, to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process. The written operating procedures shall, at a minimum, address the following elements: (1) steps for each operating phase; (2) operating limits; (3) safety and health considerations; and (4) safety systems and their functions.
6. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412, and 40 CFR § 68.69 require that the written operating procedures addressing the steps for each operating phase of a covered process include steps for initial startup, normal operations, temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround or after an emergency shutdown.
7. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), makes it unlawful for any person to operate a regulated stationary source in violation of any applicable regulation or requirement imposed under CAA § 112(r).

C. GENERAL ALLEGATIONS

8. 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).
9. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.
10. Section 325(b)(1)(A) of EPCRA, 42 U.S.C. § 11045(b)(1)(A), authorizes EPA to assess civil penalties for any violation of Section 304 of EPCRA, 42 U.S.C. § 11022.
11. The Administrator of EPA delegated enforcement authority under EPCRA to the Regional Administrators with EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator, EPA Region IX, redelegated 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, Region IX, with delegation R9 1290.18.

12. Section 313(d) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to assess civil penalties for any violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).
13. Under EPA delegation 7-6-A, dated August 4, 1994, the EPA Administrator delegated enforcement authority to the Regional Administrators under Section 113(d) of the CAA, 42 U.S.C. § 7413(d). The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1265.05A, dated August 14, 2003.
14. Respondent owns and operates a fruit processing business. Respondent's business is located at 7916 West Bellevue Road, Atwater, Merced County, California (the "Facility").

D. ALLEGED VIOLATIONS

COUNT I

(Failure to immediately notify the NRC)

15. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
16. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
17. 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).
18. At all times relevant to this CA/FO, Respondent has been in charge of the Facility.
19. 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 § 302.4. The RQ for ammonia is 100 pounds.
20. At 8:54 pm, on July 18, 2006, approximately 477 pounds of ammonia leaked or was emitted into the environment within a 24-hour period from the Facility. 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).
21. Respondent had actual or constructive knowledge of the release at or around 8:54 pm on July 18, 2006.
22. At 12:03 am, on July 19, 2006, more than three hours after the incident, Respondent notified the NRC of the ammonia release at the Facility.

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23. Respondent's failure to immediately notify the NRC of the July 18, 2006 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)

24. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
26. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
27. 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).
28. 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.
29. 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).
30. At all times relevant to this CA/FO, Respondent "produced, used, or stored" ammonia at the Facility.
31. At 8:54 pm, on July 18, 2006, approximately 477 pounds of ammonia leaked or was emitted into the environment within a 24-hour period from the Facility. The leaking or emitting of ammonia from the Facility was a "release" as defined by Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
32. The 477 pounds of ammonia released from the Facility entered the ambient air outside the boundaries of the Facility.
33. The Respondent was required to report the release to the NRC under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
34. At 12:26 am, on July 19, 2006, more than three hours after the incident, Respondent sent an email notification of the ammonia release from the Facility to the Merced County Department of Environmental Health ("MCDEH"), which is the Certified Unified Program Agency for Merced County and serves the function of the LEPC for Atwater, California. At 7:38 am, on July 19, 2006, Respondent notified the MCDEH of the ammonia release by telephone. At 9:15 am on July 19, 2006, Respondent notified the

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California Office of Emergency Services, which functions as the SERC in California, of the ammonia release from the Facility.

35. Respondent's failure to immediately notify the SERC and the LEPC of the July 18, 2006 release from the Facility is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

COUNT III

(Failure to prepare written operating procedures)

36. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 CFR § 68.3.
38. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by Section 112(a)(9), 42 U.S.C. § 7412(a)(9).
39. At all times relevant to this CA/FO, Respondent was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
40. Ammonia (anhydrous) is a "regulated substance" as defined by Section 112(r)(2)(B) and 40 CFR §§ 68.3 and 68.130.
41. The Facility's southwest chiller is a "process" as defined by 40 CFR § 68.3 because it uses ammonia, a regulated substance.
42. The "threshold quantity" for ammonia (anhydrous) is 10,000 pounds.
43. The Facility's southwest chiller is a "covered process" as defined by 40 CFR § 68.3 because, at all times relevant to this CA/FO, it had a regulated substance present in more than a threshold quantity. The Facility's southwest chiller meets the Program 3 eligibility requirements as set forth in 40 CFR § 68.10.
44. Between June 9, 2004, and September 6, 2006, Respondent failed to develop or implement written operating procedures that provide clear instructions for safely conducting activities associated with operation of the southwest chiller.
45. Respondent's failure to develop written operating procedures for the southwest chiller is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.69.

E. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

46. Respondent shall complete the two following supplemental environmental projects ("SEPs"), which the parties agree are intended to secure significant environmental or

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public health protection and improvements.

- a. Not more than sixty (60) days after the issuance of this CA/FO, Respondent shall sponsor and fund a one-day compliance promotion seminar for owners and operators of ammonia refrigeration systems in the Merced area of California's Central Valley (the "Compliance Promotion SEP"). The focus of the Compliance Promotion SEP will be (1) risk management plans for ammonia refrigeration systems; (2) compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Section 304, 42 U.S.C. § 11004, and CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7); and (3) ammonia safety. The Compliance Promotion SEP is more specifically described in the scope of work (the "Scope of Work"), attached hereto as Exhibit A and incorporated herein by reference.
 - b. Not more than sixty (60) days after issuance of this CA/FO, Respondent shall purchase specified emergency response equipment for the Merced County Environmental Health Department and the Merced County Fire Department's Hazardous Materials Emergency Response Team (the "Equipment SEP"). The Equipment SEP is more specifically described in the Scope of Work.
47. The total expenditure for the two SEPs shall be not less than **SIXTY-FIVE THOUSAND DOLLARS** (\$65,000). Respondent shall spend \$12,000 on the Compliance Promotion SEP and the remaining money (\$53,000) on the Equipment SEP. Respondent shall include documentation of the expenditures made in connection with each of the SEPs as part of the SEP Completion Report (described below).
48. Respondent hereby certifies that, as of the date of its signing of this CA/FO, Respondent is not required to perform or develop either of the SEPs by any federal, state, or local law or regulation, nor is Respondent required to perform or develop the SEPs under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs.
49. SEP Reports
- a. Respondent shall submit a SEP Completion Report to EPA by December 14, 2007. The SEP Completion Report shall contain the following information:
 - i. A detailed description of the SEPs as implemented;
 - ii. Documented, itemized costs;
 - iii. Certification that the SEPs have been fully implemented pursuant to the provisions of this CA/FO; and
 - iv. A description of the environmental and public health benefits resulting from implementation of the SEPs (with a quantification of the benefits and pollutant reductions, if feasible).
 - b. Respondent shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein.
 - c. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 72 below.

- d. Respondent shall submit all notices and reports required by this CA/FO by first class mail to:

Karin Graves
Emergency Planning and Preparedness Section (SFD-9-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

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

50. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by 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.

51. EPA acceptance of SEP Completion Report

- a. After receipt of the SEP Completion Report described in Paragraph 49(a) above, EPA will notify the Respondent, in writing: i) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the SEPs have been completed satisfactorily; or (iii) determining that the SEPs have not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraph 72 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty

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(30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent. EPA's decision shall be final and binding upon Respondent. In the event the SEPs are not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 72 herein.

52. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency."
53. The expenditures made by Respondent in implementing the SEPs 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 these SEPs to obtain favorable federal tax treatment.

F. CIVIL PENALTY

54. 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 CFR 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 CERCLA 103 occurs after March 15, 2004. See Table 1 of 40 CFR § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).
55. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR 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 EPCRA 304 occurs after March 15, 2004. See Table 1 of 40 CFR § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).
56. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR 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 CAA 112(r) occurs after March 15, 2004. See Table 1 of 40 CFR § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).
57. Based on the facts alleged herein and upon all the factors that EPA considers pursuant to the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* ("EPCRA/CERCLA ERP") and the *Combined Enforcement Policy for § 112(r) of the Clean Air Act* ("CAA 112(r) CEP"), including the nature, extent, and gravity of the violations; Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit;

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and such other matters as justice may require, EPA proposes that, in addition to conducting the two SEPs described in Section E, Respondent be assessed a civil penalty of **EIGHTY-SIX THOUSAND NINE HUNDRED AND THIRTY DOLLARS (\$86,930)** for the violations alleged herein.

G. ADMISSIONS AND WAIVERS

58. 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; Section 113 of the CAA, 42 U.S.C. § 7413; and 40 CFR §§ 22.4, 22.34, 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 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.
59. 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; Section 325 of EPCRA, 42 U.S.C. § 11045; or Section 113 of the CAA, 42 U.S.C. § 7413, 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.

H. PARTIES BOUND

60. 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 F has been paid in accordance with Section J, 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.
61. 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.
62. 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.
63. The undersigned representative of Respondent hereby certifies that he or she is fully

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authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

I. CERTIFICATION OF COMPLIANCE

64. Upon signing this CA/FO, Respondent certifies to EPA that, to the best of its knowledge, Respondent has fully complied with the requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); Section 304 of EPCRA, 42 U.S.C. § 11004(a); and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), that formed the basis for the violations alleged in Section D above, and that Respondent is now in compliance with the relevant current obligations to prepare written operating procedures under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).
65. 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

66. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **EIGHTY-SIX THOUSAND NINE HUNDRED AND THIRTY DOLLARS (\$86,930)** in settlement of the violations set forth in Section D above. This CA/FO constitutes a full settlement of all claims for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); Section 304(a) of EPCRA, 42 U.S.C. § 11004(a); and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), alleged in Section D above.
67. 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 **EIGHTY-SIX THOUSAND NINE HUNDRED AND THIRTY DOLLARS (\$86,930)**, payable to "Treasurer, United States of America," to:

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

The check shall reference the name and docket number of the 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:

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Karin Graves
Emergency Planning and 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

68. 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 C.F.R. §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.
69. 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.
- K. DELAY IN PERFORMANCE / STIPULATED PENALTIES
70. 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.
71. In addition to the interest and per annum penalties described in Paragraph 68, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Section J, Respondent agrees to pay EPA a stipulated penalty in the amount of ONE HUNDRED DOLLARS (\$100.00) for each day the default continues.
72. Stipulated penalties for failure to complete the SEP/failure to spend agreed-on amount
- a. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEPs described in Paragraph 46 above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in Paragraph 47 above, Respondent shall

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be liable for stipulated penalties according to the provisions set forth below:

- i. Except as provided in subparagraph (ii) immediately below, if Respondent does not complete the Compliance Promotion SEP satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of \$12,000; and if Respondent does not complete the Equipment SEP satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of \$55,000.
 - ii. If the SEPs are not completed in accordance with Paragraphs 46 and 47, but the EPA determines that the Respondent: a) made good faith and timely efforts to complete the SEPs; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money that was required to be spent was expended on each SEP, Respondent shall not be liable for any stipulated penalty.
 - iii. If the SEPs are completed in accordance with Paragraphs 46 and 47, but the Respondent spent less than 90 percent of the amount of money required to be spent for either SEP, Respondent shall pay a stipulated penalty to the United States in the amount of \$2,000 in the instance of the Compliance Promotion SEP and a stipulated penalty of \$5,000 in the instance of the Equipment SEP.
 - iv. If the SEPs are completed in accordance with Paragraphs 46 and 47, and the Respondent spent at least 90 percent of the amount of money required to be spent for each project, Respondent shall not be liable for any stipulated penalty.
 - v. For failure to submit the SEP Completion Report required by Paragraph 49(a) above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after December 14, 2007, until the report is submitted.
 - vi. For failure to submit any other report required by Paragraph 49(b) above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEPs have been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA.
 - c. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
73. 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 fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section J of this CA/FO.
74. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United

States Treasury, as described at 40 CFR §13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this Agreement or with CERCLA, EPCRA, or the CAA and their implementing regulations.

75. 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

76. EPA expressly reserves all rights and defenses that it may have.

77. 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 legally required 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; Section 325 of EPCRA, 42 U.S.C. § 11045; and Section 113 of the CAA, 42 U.S.C. § 7413.

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

79. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

80. 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 and completion of the two SEPs proposed herein shall resolve Respondent's liability for the violations and facts alleged herein.

81. 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

82. 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

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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

83. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
84. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
85. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
86. 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.

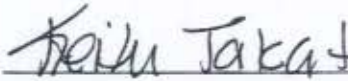
IT IS SO AGREED.

20 SEPT 07



Jon Rodacy
Vice President and General Manager
Dole Packaged Foods – Atwater Operations
Dole Packaged Foods, LLC

9/25/07



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-09-2007-~~0024~~, CERCLA-09-2007-~~0025~~, CAA-09-2007-~~0030~~) be entered and that Respondent perform the Compliance Promotion SEP and the Equipment SEP in accordance with Section E of the Consent Agreement and pay a civil penalty in the amount of **EIGHTY-SIX THOUSAND NINE HUNDRED AND THIRTY DOLLARS (\$86,930)**.

09/26/07



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

Dole Packaged Foods, LLC
Docket No. EPCRA 9-2007-

APPENDIX A

1. Compliance Promotion SEP

- a. Not more than sixty (60) days after issuance of the Consent Agreement and Final Order ("CA/FO"), Respondent will sponsor and fund a one-day compliance promotion seminar for owners and operators of ammonia refrigeration systems in the Merced area of California's Central Valley (the "Compliance Promotion SEP"). The focus of the Compliance Promotion SEP will be: (1) risk management plans ("RMPs") for ammonia refrigeration systems; (2) compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Section 304, 42 U.S.C. § 11004, and CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7); and (3) ammonia safety.
- b. Specific topics covered by Respondent during the Compliance Promotion SEP will include the following:
 - i. Common deficiencies with RMPs, conducting triennial reviews, and complying with regulatory requirements;
 - ii. Conducting a process hazard analysis and ensuring that mechanical integrity requirements are met;
 - iii. The overlap between homeland security regulations and the RMP program;
 - iv. The requirements of California's RMP program (Cal/ARP);
 - v. Emergency response, ammonia safety issues, and treatment of ammonia exposure; and
 - vi. CERCLA Section 103, 42 U.S.C. § 9603, and EPCRA Section 304, 42 U.S.C. § 11004, release reporting obligations.
- c. No later than two weeks prior to the scheduled date of the Compliance Promotion SEP Respondent shall submit to EPA for approval:
 - i. The final list of topics that Respondent will present at the Compliance Promotion SEP and
 - ii. The names, titles, and employers of persons that will present topics at the Compliance Promotion SEP

Submittal shall be by electronic mail and shall be made to Michael Massey (massey.michael@epa.gov) and Karin Graves (graves.karin@epa.gov). EPA will notify Respondent of any objections or changes to be made to the program within three business days of receipt of the submittal.

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- d. Respondent will include, as part of the SEP Completion Report (see CA/FO, Paragraph 49) one copy of all written program materials, including power point slides, provided to attendees of the Compliance Promotion SEP.
- e. Respondent will hold the Compliance Promotion SEP within fifty (50) miles of Atwater, California.
- f. Respondent agrees to spend TWELVE THOUSAND DOLLARS (\$12,000) to sponsor the Compliance Promotion SEP. The \$12,000 will be used to (1) pay presenters at the Compliance Promotion SEP, including their travel costs; (2) pay the fee to secure the conference space; (3) pay for development and reproduction of seminar materials; (4) pay to advertise the seminar; and (5) cover registration costs and other logistics.
- g. Respondent will make it clear both in the printed materials distributed to attendees and in introductory remarks at the Compliance Promotion SEP that it is undertaking the Compliance Promotion SEP pursuant to a settlement agreement with EPA.

2. Equipment SEP

- a. Not more than sixty (60) days after issuance of the CA/FO, Respondent will purchase emergency response equipment for the Merced County Environmental Health Department (the "Merced County CUPA") and the Merced County Fire Department Hazardous Materials Emergency Response Team ("Merced County Hazmat Team"). The equipment will cost FIFTY-THREE THOUSAND DOLLARS (\$53,000).
- b. The emergency response equipment to be purchased shall include the following:

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Equipment	County Agency
Six Trellechem Level A suits	Merced County Hazmat Team
Night Vision binocular (Generation II or III)	Merced County Hazmat Team
Sound sensing leak detector (ultrasonic)	Merced County Hazmat Team
Refrigerant leak detector	Merced County Hazmat Team
Level B suits (CPF3 ensemble with shoulder length hood meeting NFPA 1994)	Merced County Hazmat Team
Silvershield/4H gloves	Merced County Hazmat Team
Butyl Gloves	Merced County Hazmat Team
Cryogenic gloves	Merced County Hazmat Team
High temp gloves	Merced County Hazmat Team
Complete mechanics tool set (i.e. Craftsman, Screwdrivers, wrenches, sockets, etc)	Merced County Hazmat Team
Portable eye wash station	Merced County Hazmat Team
Propane fork lift (new or rebuilt)	Merced County CUPA
Chain hoist (electric or pneumatic)	Merced County CUPA
Computer, laptop or tower	Merced County CUPA

- c. If Respondent intends to purchase emergency response equipment not included on the above list, it shall first obtain approval from EPA.
- d. No later than one week prior to Respondent's purchase of the emergency response equipment, Respondent shall provide EPA with a complete list of all equipment to be purchased, along with cost figures for each piece of equipment to be purchased. Respondent shall provide the list of emergency response equipment by electronic mail to Michael Massey (massey.michael@epa.gov) and Karin Graves (graves.karin@epa.gov).

① 9/20/07

