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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)

Western Precooling Systems Inc.)

Respondent.)

Docket No.
CERCLA-9-2007-0002

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, 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 Western Precooling Systems, Inc., a 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 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(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 during a 24-hour period.

C. GENERAL ALLEGATIONS

4. 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).

5. 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, re delegated that authority to the Director of the Superfund Division with delegation R9 1290.16.

6. Respondent owns and operates the Western Precooling/Oxnard Berry Cooler facility located at 1000 Industrial Avenue, Oxnard, Ventura County, California (the “Facility”). Respondent provides precooling services, equipment, and facilities to fruit and vegetable growers and shippers.

7. 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).

8. 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).
9. At all times relevant to this CA/FO, Respondent has been in charge of the Facility.
10. 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 reportable quantity for ammonia is 100 pounds.

D. ALLEGED VIOLATIONS

COUNT I

(Failure to immediately notify the National Response Center)

11. Paragraphs 1 through 10 above are incorporated herein by this reference as if they were set forth here in their entirety.
12. At approximately 7:30 am PDT, on June 17, 2006, approximately 474 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).
13. Respondent had actual or constructive knowledge of the release at approximately 7:35 am PDT on June 17, 2006.
14. At 9:14 am PDT, on June 17, 2006, Respondent notified the NRC of the ammonia release at the Facility.
15. Respondent's failure to immediately notify the NRC of the release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

E. CIVIL PENALTY

16. 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).
17. 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"), including the nature, extent, and gravity of the violations, the 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 the Respondent be assessed, and Respondent agrees to pay **FOUR THOUSAND, FIVE HUNDRED AND FIFTY DOLLARS (\$4,550)** as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the EPCRA/CERCLA ERP.

F. ADMISSIONS AND WAIVERS

18. 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, 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 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.

19. 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 309 of CERCLA, 42 U.S.C. § 9609, 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

20. 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 full settlement of the violations alleged herein.
21. 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.

22. 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.
23. 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 it.

H. CERTIFICATION OF COMPLIANCE

24. 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), that formed the basis for the violations alleged in Section D above.
25. 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.

I. PAYMENT OF CIVIL PENALTY

26. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **FOUR THOUSAND, FIVE HUNDRED AND FIFTY DOLLARS (\$4,550)** in settlement of the violations set forth in Section D above. This Consent Agreement and Final Order constitutes a settlement of all claims for the violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), alleged in Section D above.
27. 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 **FOUR THOUSAND,**

FIVE HUNDRED AND FIFTY DOLLARS (\$4,550), 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 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:

Michael Massey (ORC-3)
Assistant 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

28. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send 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 CFR §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.
29. 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.

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

30. 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.
31. For failure to submit a payment to EPA by the time required in this CA/FO: 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 FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.
32. 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 Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section I of this CA/FO.
33. 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. 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.

34. 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.

K. RESERVATION OF RIGHTS

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

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

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

38. 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.

39. 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.

L. OTHER CLAIMS

40. 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

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

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

43. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

44. 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,

August 8, 2007

Date

Bret L. Niedens

Bret L. Niedens
Safety Director
Western Precooling Systems, Inc., Oxnard Division

5 September 2007

Date

Keith Takata

For 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 (EPA Docket No. CERCLA-9-2007-0002) be entered and that Respondent pay a civil penalty in the amount of **FOUR THOUSAND, FIVE HUNDRED AND FIFTY DOLLARS (\$4,550)**.

09/07/07

Date



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

CERTIFICATE OF SERVICE

Docket No. CERCLA-09-2007-0002

I hereby certify that the original copy of the foregoing Expedited Settlement Agreement, 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:

Bret L. Niedens
Safety Director
Western Precooling Systems, Inc.
Oxnard Division
P.O. Box 5083
Oxnard, CA 93031

9-11-07

Date



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