



Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is VCD Pledge Holdings, LLC, a limited liability company organized under the laws of the state of Delaware.

2. This Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (“CA/FO”) simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations.

**B. STATUTORY AND REGULATORY FRAMEWORK**

3. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, require the owner or operator of a stationary source to prepare, submit and implement a risk management plan for any process at the stationary source which has a regulated substance present in more than a threshold quantity.

**C. GENERAL ALLEGATIONS**

4. Respondent operates a cold storage facility at 4224 District Blvd., in Vernon, California (“Facility”).
5. At all times relevant to this CA/FO, Respondent has been an owner or operator of a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3. This “stationary source” is located at the Facility.
6. As part of the stationary source, there is a “process” as defined by 40 C.F.R. Part 68.3.
7. Ammonia is a “regulated substance” as defined by Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and 40 C.F.R. § 68.3. The listing of this “regulated substance” is set forth in Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and at 40 C.F.R.

§ 68.130.

8. At all times relevant to this CA/FO, ammonia was present in the process at the stationary source at the Facility in an amount above the “threshold quantity” established pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), and as defined by 40 C.F.R. § 68.3.
9. The process at the stationary source is a “covered process” as defined by 40 C.F.R. § 68.3.
10. At all times relevant to this CA/FO, Respondent was required by Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), and 40 C.F.R. Part 68, to implement a “risk management plan” or “RMP,” as defined by 40 C.F.R. § 68.3, for the stationary source at the Facility.
11. At all times relevant to this CA/FO, the Facility was subject to the Program 3 requirements of 40 C.F.R. Part 68.
12. On or around April 14, 2010, EPA initiated an investigation of Respondent’s compliance with Section 112(r)(7) of the CAA and 40 C.F.R. Part 68, at the Facility.
13. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to commence an administrative penalty action for any violation of Section 112 of the CAA, 42 U.S.C. § 7412.
14. The Administrator of EPA delegated enforcement authority under Section 113 of the CAA, 42 U.S.C. § 7413, to the Regional Administrators with EPA Delegation 7-6-B, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority as it relates to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Superfund Division with regional delegation R9 1265.01A.
15. EPA alleges that Respondent failed to fully comply with the requirements of Section

112(r)(7) of the CAA and 40 C.F.R. Part 68.

**D. ALLEGED VIOLATIONS**

COUNT I

(Failure to maintain records)

16. Paragraphs 1 through 14 above are incorporated by this reference as if they were set forth here in their entirety.
17. 40 C.F.R. § 68.200 requires that the owner or operator of the stationary source maintain records supporting the implementation of the RMP.
18. 40 C.F.R. § 68.65(d)(1) requires that the owner or operator of the stationary source compile written process safety information pertaining to the materials of construction of equipment in the covered process.
19. 40 C.F.R. § 68.81(a) requires that the owner or operator of the stationary source investigate each incident involving a potential or actual catastrophic release of a regulated substance.
20. On or around October 2007 and May 2009, Respondent conducted investigations in accordance with 40 C.F.R. § 68.81(a) at the Facility.
21. 40 C.F.R. § 68.81(d)(2) requires that the owner or operator of the stationary source prepare an incident investigation report that includes the date that the incident investigation began.
22. EPA alleges that Respondent failed to maintain records documenting compliance with 40 C.F.R. §§ 68.65(d)(1) and 68.81(d)(2), in violation of CAA Section 112(r)(7) and 40 C.F.R. § 68.200.

## COUNT II

(Failure to follow manufacturer's recommendations)

23. Paragraphs 1 through 22 above are incorporated by this reference as if they were set forth here in their entirety.
24. 40 C.F.R. §§ 68.73(a)(5) and (d)(3) require inspection and testing of monitoring devices and sensors in accordance with applicable manufacturers' recommendations and good engineering practices.
25. Respondent's covered process at the Facility includes ammonia sensors.
26. EPA alleges that Respondent failed to test ammonia sensors at the Facility as required by the applicable manufacturer's recommendations, in violation of Section 112(r)(7) and 40 C.F.R. § 68.73(d)(3).

### **E. CIVIL PENALTY**

27. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted by the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day of violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).
28. Based on the facts alleged herein and upon all the factors that the EPA considers pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* ("CEP"), including the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the

duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require, EPA proposes that Respondent be assessed, and Respondent agrees to pay **SEVEN THOUSAND AND NINE HUNDRED DOLLARS (\$7,900)** in settlement of the civil penalty claims for the violations alleged herein. The proposed penalty was calculated in accordance with the CAA and the CEP.

**F. ADMISSIONS AND WAIVERS**

29. For the purpose 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 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. § 22.1(a)(2). Further, 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.
30. Respondent neither admits nor denies the factual allegations set forth in Section D of this CA/FO. For the purpose of this proceeding, 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, 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**

31. 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.
32. 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.
33. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of Respondent's ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
34. 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**

35. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has fully complied with the requirements of 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.
36. 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**

37. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **SEVEN THOUSAND AND NINE HUNDRED DOLLARS (\$7,900)** in settlement of the violations set forth in Section D above. This Consent Agreement and Final Order constitutes a settlement of the civil penalty claims of the United States for the violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 alleged in Section D above.
38. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order is filed after it is signed by the Regional Judicial Officer or the Regional Administrator.
39. Respondent shall submit the payment due under this CA/FO in accordance with one of the options set forth below, and shall reference the Respondent's name and state that payment is being made pursuant to this CA/FO:
- a. A check sent by regular U.S. Postal Service mail should be made payable to the "Treasurer, United States of America" and addressed to:  
US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000
  - b. A wire transfer directed to the Federal Reserve Bank of New York as follows:  
Federal Reserve Bank of New York  
ABA = 021030004



Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

- c. A check sent by overnight mail should be payable to the "Treasurer, United States of America" and addressed to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson, 314-418-4087

- d. If using ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

- e. An On Line Payment Option is available through the U.S. Department of Treasury. To use this payment option, access [WWW.PAY.GOV](http://WWW.PAY.GOV); enter "sfo 1.1" in the search field; and open the form and complete required fields.

40. Respondent shall concurrently send a copy of the check or other form of payment or evidence thereof by certified mail, return receipt requested, to:

Karen Henry  
Superfund Division (SFD-9-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

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

41. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current interest rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. A late penalty charge will be imposed if payment is not received by the due date, with an additional charge for each subsequent 30-day period the payment is not received. 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.

42. 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**

43. In addition to the interest, late charges and per annum penalties described above, in the event Respondent fails to pay the full amount of the penalty within the time specified in Section I of this CA/FO, Respondent agrees to pay a stipulated penalty in the amount of up to **FIVE HUNDRED DOLLARS (\$500)** for each day the delay continues.

44. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within thirty (30) days of receipt of a written demand 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.
45. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the 30-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.
46. 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.
47. 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.

**K. RESERVATION OF RIGHTS**

48. EPA expressly reserves all rights and defenses that it may have.
49. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any right EPA may have 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 113 of the CAA, 42 U.S.C. § 7413. 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.

50. 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.
51. This CA/FO is not intended to be nor shall it be construed as a permit.
52. The filing 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 alleged herein.

**L. OTHER CLAIMS**

53. 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.

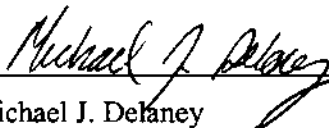
**M. MISCELLANEOUS**

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

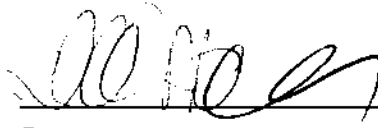
**IT IS SO AGREED,**

For Respondent **VCD PLEDGE HOLDINGS, LLC**

9/24/2012  
Date

  
\_\_\_\_\_  
Michael J. Delaney  
VCD Pledge Holdings, LLC

27 September 2012  
Date

  
\_\_\_\_\_  
For Jane Diamond  
Director  
Superfund Division  
United States Environmental Protection Agency,  
Region IX

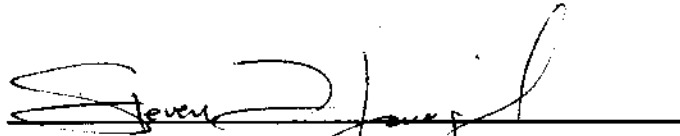
**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (EPA Docket No. CAA(112r)-09-2012- ~~6609~~) be entered and that Respondent VCD Pledge Holdings, LLC, shall pay a civil penalty in the amount of SEVEN THOUSAND AND NINE HUNDRED DOLLARS (\$7,900), in accordance with the terms of this Consent Agreement and Final Order.

**THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING.**

09/28/12

Date

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

**CERTIFICATE OF SERVICE**

I certify that the original of the Consent Agreement and Final Order in the matter of VCD Pledge Holdings, LLC, was filed with:

Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

A true and correct copy of the same was sent to the following parties

via CERTIFIED to:

Michael J. Delaney  
Americold  
10 Glenlake Parkway  
South Tower, Suite 800  
Atlanta, GA 30328

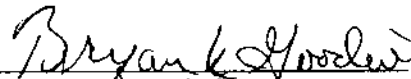
**CERTIFIED MAIL NUMBER:** 7011 0470 0002 9197 7500

and by mail to:

John C. Spinrad  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> Street, N.W., Suite 2100  
Atlanta, GA 30363-1031

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Letitia Moore  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

9/28/12  
Date



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

75 Hawthorne Street  
San Francisco, CA 94105

**CERTIFIED MAIL NO.:** 7011 0470 0002 9197 7500  
**RETURN RECEIPT REQUESTED**

In Reply Refer to: Americold-Versacold-VCD Holdings

SEP 28 2012

Michael J. Delaney  
Americold  
10 Glenlake Parkway, South Tower Suite 800  
Atlanta, GA 30328

Re: Americold-Versacold-VCD Holdings LLC


Dear Mr. Delaney:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Americold-Versacold-VCD Holdings LLC.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Clean Air Act (CAA) compliance matters between Americold-Versacold-VCD Holdings LLC, Inc. and EPA as alleged in the CA/FO.

If you have any questions regarding the CAA requirements and regulations governing operations at your facility, or which concern the proceedings terminated by the enclosed documents, please contact Karen Henry of my staff at (415) 972-3844.

Sincerely,

*For*   
Jane Diamond

Director  
Superfund Division

Enclosures