UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2



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| In the matter of:<br><br>Peerless Oil and Chemicals Inc.,<br><br>Respondent.<br><br>In a proceeding under Section 113(d)<br>of the Clean Air Act, 42 U.S.C. § 7413(d) |

**CONSENT AGREEMENT**
**AND**
**FINAL ORDER**

**CAA-02-2023-1212**

## A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112 and 114 of the Act, 42 U.S.C. §§ 7411, 7412, and 7414.

3. Complainant is the United States Environmental Protection Agency, Region 2 (the "EPA"). On EPA's behalf, the Director of the Caribbean Environmental Protection Division ("CEPD") for EPA Region 2 is delegated the authority to settle civil administrative penalty

proceedings under Section 113(d) of the Act. Specifically, pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Director of the CEPD, through the Regional Administrator of EPA Region 2, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the Commonwealth of Puerto Rico. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.

4. Respondent is Peerless Oil and Chemicals Inc. ("Peerless"), a corporation doing business in the Commonwealth of Puerto Rico. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

5. EPA has determined that Peerless violated the CAA and implementing regulations promulgated under the CAA. The violations occurred at Peerless' bulk gasoline terminal facility (the "Facility") located at 671 Road 337, in Peñuelas, Puerto Rico. Specifically, EPA alleges that Peerless violated:

a. the "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)," 40 C.F.R. Part 63, Subpart R, §§ 63.420 *et seq*. ("NESHAP Subpart R"); and

b. the National Emission Standards for Hazardous Air Pollutants "General Provisions," 40 C.F.R. Part 63, Subpart A, § 63.6(e) ("NESHAP General Provisions").

The violations found by EPA are set forth below in Section E of this Consent Agreement entitled "Conclusions of Law."

6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement")

and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

## B. JURISDICTION

7. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

8. Pursuant to Section 113(d) of the Act, the EPA Administrator and the Attorney General, through the respective delegates, have jointly determined that this matter, although it involves alleged violations that occurred more than 12 months prior to the initiation of this action, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).

9. The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b).

10. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

## C. GOVERNING LAW

*CAA Sections 112, 111 and 114*

11. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants ("HAPs"), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

12. Emissions standards promulgated pursuant to Section 112 of the Act are commonly known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs").

13. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.

14. Section 112(a)(9) of the Act defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.

15. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

16. Section 111 of the Act provides for "standards of performance" for new and existing stationary sources of air pollution. Under Section 111(b) of the Act, EPA is required to promulgate standards of performance for new stationary sources, commonly known as New Source Performance Standards ("NSPS").

17. Section 111(a)(1) of the Act defines "standard of performance" as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which, taking into account the cost of achieving such reduction and other specified factors, the Administrator determines has been adequately demonstrated.

18. Section 114 of the CAA authorizes the EPA Administrator to require sampling or testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 or 112 of the Act.

19. Section 302(e) of the CAA defines "person" to include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

*NESHAP Subpart R*

20. Pursuant to Section 112 and 114 of the Act, EPA promulgated "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)," 40 C.F.R. Part 63, Subpart R, §§ 63.420 *et seq*. 59 Fed. Reg. 64318 (Dec. 14, 1994) (as amended) (NESHAP Subpart R).

21. 40 C.F.R. § 63.420 provides that the affected source to which NESHAP Subpart R applies is each bulk gasoline terminal, except as otherwise provided.

22. 40 C.F.R. § 63.421 defines "Bulk gasoline terminal" as any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the EPA Administrator and any other person.

23. 40 C.F.R. § 63.421 defines "Flare" as a thermal oxidation system using an open (without enclosure) flame.

24. 40 C.F.R. § 63.421 defines "Thermal oxidation system" as a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

25. 40 C.F.R. § 63.421 defines "Gasoline cargo tank" as a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

*Gasoline Storage Vessels*

26. 40 C.F.R. § 63.423 provides that each owner or operator of a bulk gasoline terminal subject to the requirements of NESHAP Subpart R shall equip each gasoline storage vessel with a design capacity greater than or equal to 75 $m^3$ according to the requirements in 40 C.F.R. § 60.112b(a)(1) through (4) of NSPS Subpart Kb, except as otherwise provided. (See Paragraphs

30 and 32, below).

27. 40 C.F.R. § 63.425(d) provides that the owner or operator of each gasoline storage vessel subject to the provisions of 40 C.F.R. § 63.423 shall comply with the testing and monitoring procedures in 40 C.F.R. § 60.113b of NSPS Subpart Kb, among other things. (See Paragraphs 33 and 34, below).

28. Pursuant to Sections 111 and 114 of the Act, EPA promulgated "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984," 40 C.F.R. Part 60, Subpart Kb, §§ 60.110b *et seq*. 52 Fed. Reg. 11429 (April 8, 1987) (as amended) ("NSPS Subpart Kb").

29. 40 C.F.R. § 60.111b of NSPS Subpart Kb defines "storage vessel" as each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors;

(2) subsurface caverns or porous rock reservoirs; or

(3) process tanks.

30. Internal floating roof. 40 C.F.R. § 60.112b(a)(1) of NSPS Subpart Kb provides that for each storage vessel equipped with a fixed roof in combination with an internal floating roof, the internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. *Id.* When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible. *Id.* 40 C.F.R. § 60.112b(a)(1)

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further provides that each internal floating roof shall be equipped with one of the specified closure devices between the wall of the storage vessel and the edge of the internal floating roof; that each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface; and that each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. *Id.* Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use; automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports; rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting; and each penetration of the internal floating roof for the purpose of sampling shall be a sample well. *Id.* The sample well shall have a slit fabric cover that covers at least 90 percent of the opening; each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover; and each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover. *Id.*

31. External floating roof. 40 C.F.R. § 60.112b(a)(2) of NSPS Subpart Kb provides that for each storage vessel equipped with an external floating roof, each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. *Id.* The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal. The secondary seal shall

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completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as otherwise provided. *Id.* 40 C.F.R. § 60.112b(a)(2) further provides, in relevant part, that except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use, and that automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Automatic bleeder vents and rim space vents are to be gasketed. *Id.*

32. 40 C.F.R. § 60.113b(a)(2) provides, in relevant part, that for vessels equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days.

33. 40 C.F.R. § 60.113b(b)(4) of NSPS Subpart Kb provides that, after installing the control equipment required to meet 40 C.F.R. § 60.112b(a)(2) (external floating roof), the owner or operator shall make necessary repairs or empty the storage vessel within 45 days of identification in any inspection for seals not meeting the specified requirements, except as otherwise provided.

34. 40 C.F.R. § 60.113b(b)(4)(ii) of NSPS Subpart Kb provides that the secondary seal is to meet the following requirements: (A) the secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as otherwise provided; (B) the accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 $cm^2$ per meter of tank diameter, and the width of any portion of any

gap shall not exceed 1.27 cm; and (C) there are to be no holes, tears, or other openings in the seal or seal fabric.

*Gasoline Truck Loading Rack*

35. Pursuant to the loading rack standards at 40 C.F.R. § 63.422(a), each owner or operator of loading racks at a bulk gasoline terminal subject to the provisions of NESHAP Subpart R shall comply with the requirements in 40 C.F.R. § 60.502 except for paragraphs (b), (c), and (j) of § 60.502. For purposes of the NESHAP Subpart R loading rack standards, the term "affected facility" used in 40 C.F.R. § 60.502 means the loading racks that load gasoline cargo tanks at the bulk gasoline terminals subject to the provisions of NESHAP Subpart R.

36. Pursuant to Section 111 of the Act, EPA promulgated the "Standards of Performance for Bulk Gasoline Terminals," 40 C.F.R. Part 60, Subpart XX, §§ 60.500 *et seq*. 48 Fed. Reg. 37590 (Aug. 18, 1983) (as amended) ("NSPS Subpart XX").

37. Pursuant to the loading rack standards at 40 C.F.R. § 60.502(a) of NSPS Subpart XX, each affected facility shall be equipped with a vapor collection system designed to collect the total organic compounds vapors displaced from tank trucks during product loading.

38. Pursuant to 40 C.F.R. § 60.501 of NSPS Subpart XX, "Vapor collection system" means any equipment used for containing total organic compounds vapors displaced during the loading of gasoline tank trucks.

39. Pursuant to 40 C.F.R. § 60.501, "Vapor processing system" means all equipment used for recovering or oxidizing total organic compounds vapors displaced from the affected facility.

40. Pursuant to the loading rack standards at 40 C.F.R. § 63.422(b), emissions to the atmosphere from the vapor collection and processing systems due to the loading of gasoline cargo tanks shall not exceed 10 milligrams of total organic compounds per liter of gasoline loaded.

41. Pursuant to the loading rack standards at 40 C.F.R. § 63.422(c), for the purposes of 40 C.F.R. § 63.422, the term "tank truck" as used in 40 C.F.R. § 60.502(e) means "cargo tank."

42. Pursuant to the loading rack standards at 40 C.F.R. § 63.422(d), each owner or operator shall meet the requirements in 40 C.F.R. § 63.422 as expeditiously as practicable, but no later than December 15, 1997, at existing facilities and upon startup for new facilities.

43. Pursuant to 40 C.F.R. § 63.425(a)(2), the performance test requirements specified in NESHAP Subpart R do not apply to flares defined in 40 C.F.R. § 63.421 and meeting the flare requirements in 40 C.F.R. § 63.11(b) of the NESHAP General Provisions. The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in 40 C.F.R. § 63.11(b) and 40 C.F.R. § 60.503(a), (b), and (d), respectively.

44. Pursuant to the continuous monitoring requirements at 40 C.F.R. § 63.427(a), each owner or operator of a bulk gasoline terminal subject to the provisions of NESHAP Subpart R shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) as specified in 40 C.F.R. § 63.427(a)(1), (a)(2), (a)(3), or (a)(4), except as allowed in 40 C.F.R. § 63.427(a)(5).

45. Pursuant to the continuous monitoring requirements at 40 C.F.R. § 63.427(a)(4), where a flare meeting the requirements in 40 C.F.R. § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, must be installed in proximity to the pilot light to indicate the presence of a flame.

46. Pursuant to the recordkeeping and reporting requirements at 40 C.F.R. § 63.428(c)(1), each owner or operator of a bulk gasoline terminal subject to the provisions of NESHAP Subpart R shall keep an up-to-date, readily accessible record of the continuous monitoring data required under 40 C.F.R. § 63.427(a). This record shall indicate the time intervals during which loadings of gasoline cargo tanks have occurred or, alternatively, shall record the operating parameter data

only during such loadings. The date and time of day shall also be indicated at reasonable intervals on this record.

*NESHAP General Provisions*

47. 40 C.F.R. § 63.1(a)(4)(i) provides that each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in 40 C.F.R. Part 63, Subpart A of the NESHAP General Provisions is or is not included in such relevant standard.

48. 40 C.F.R. § 63.420(h) provides that each owner or operator of an affected source bulk gasoline terminal is subject to the provisions of 40 C.F.R. Part 63, Subpart A—General Provisions, as indicated in Table 1 to NESHAP Subpart R.

49. Table 1 to NESHAP Subpart R, entitled "General Provisions Applicability to Subpart R," explicitly identifies the provisions in 40 C.F.R. § 63.6(e) as being included in the NESHAP Subpart R regulation.

50. 40 C.F.R. § 63.6(e) provides that at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such operation and

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maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required § 63.6(e)(3), review of operation and maintenance records, and inspection of the source. *Id.*

51. 40 C.F.R. § 63.11(b)(1) provides that owners or operators using flares to comply with the provisions of 40 C.F.R. Part 63 shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators using flares shall monitor these control devices. *Id.*

52. 40 C.F.R. § 63.11(b)(3) provides that flares shall be operated at all times when emissions may be vented to them.

53. 40 C.F.R. § 63.11(b)(5) provides that flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame. *Id.*

54. 40 C.F.R. § 63.11(b)(6) provides that an owner/operator has the choice of adhering to the heat content specifications in 40 C.F.R. § 63.11(b)(6)(ii), and the maximum tip velocity specifications in 40 C.F.R. § 63.11(b)(7) or (b)(8), or adhering to the requirements in 40 C.F.R. § 63.11(b)(6)(i).

55. 40 C.F.R. § 63.11(b)(6)(ii) provides, in relevant part, that flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the equation in 40 C.F.R. § 63.11(b)(6)(ii). *Id.* LRU.

*Puerto Rico Title V Operating Permit Program*

56. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated under Title V of the Act, it is unlawful for any person to violate any

requirement of a permit issued under Title V of the Act, or to operate a source subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by a permitting authority under Title V of the Act.

57. Section 502(d) of the Act requires each state to develop, and submit to EPA for approval, a permit program meeting the requirements of Title V of the Act, including the requirements of the 40 C.F.R. Part 70 "State Operating Permit Programs" regulation promulgated under Section 502(b) of the Act.

58. Under Section 503(b) of the Act, the regulations promulgated under Section 502(b) of the Act must require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

59. Under Section 502(d)(1) of the Act, Puerto Rico developed, and submitted to EPA, Part VI of the Regulation for the Control of Atmospheric Pollution ("RCAP"), entitled "Operating Permit Rules for Title V Sources," RCAP Rule 601 *et seq*. (the "Puerto Rico Title V Operating Permit Program"), to meet the requirements of Title V of the Act and of 40 C.F.R. Part 70.

60. EPA granted full approval of the Puerto Rico Title V Operating Permit Program on February 26, 1996. The approval became effective on March 27, 1996. 61 Fed. Reg. 7073 (February 26, 1996).

61. Pursuant to Section 504(a) of the Act and RCAP Rule 603(a)(1) of the Puerto Rico Title V Operating Permit Program, each Title V operating permit must include, among other things, enforceable emissions limitations and standards to assure compliance with all applicable requirements.

62. Under Section 502(e) of the Act, EPA maintains its authority to enforce permits issued by a state, including the Commonwealth of Puerto Rico.

63. Under the Puerto Rico Title V Operating Permit Program, in January of 2016, Respondent submitted an application for a Title V operating permit, which is pending with the Puerto Rico Department of Natural and Environmental Resources ("DNER").

64. On August 24, 2022, Respondent submitted to DNER a request to modify its Title V permit application for the purpose to adding two emergency power generators. On September 29, 2022, DNER issued a letter informing Respondent that the Title V permit application modification was deemed administratively complete.

## D. STIPULATED FACTS

65. Peerless is a corporation, incorporated under the laws of the State of Delaware and doing business in Puerto Rico.

66. Peerless owns and operates the Facility located at 671 Road 337, in Peñuelas, Puerto Rico, including several above-ground gasoline storage tanks equipped with internal floating roof ("IFR") or external floating roof ("EFR") pollution controls, and a gasoline truck loading rack and associated flare/combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants from truck loading operations.

67. Tank 4 at the Facility has a design capacity of 19,000 barrels, and Tank 8 at the Facility has a design capacity of 11,000 barrels. Tank 4 and Tank 8 are equipped with an IFR.

68. Tank 1214 at the Facility has a design capacity of 46,000 barrels and is equipped with an EFR.

69. On June 5, 2018, EPA conducted an inspection at the Facility ("2018 Inspection") to evaluate Peerless' compliance with the applicable regulations cited above.

70. During the 2018 Inspection, EPA inspectors used a forward-looking infrared ("FLIR") camera to observe IFR storage tanks containing gasoline and noted elevated emissions of volatile

organic compounds ("VOCs") from roof vents on Tank 4. These findings were shared with Peerless at the conclusion of the 2018 Inspection; the videos of the FLIR camera observations were shared with Peerless on September 4, 2018.

71. On June 15, 2018, EPA sent Peerless an email requesting follow-up documentation related to the 2018 Inspection. The requested documentation included, among other things, gasoline throughput data and emission calculations for the Facility's gasoline storage tanks, marine loading rack, truck loading rack; information related to the products stored in the storage tanks during the time of the 2018 Inspection; information related to the construction and design of the storage tanks and associated external floating roofs; documentation of recent storage tank inspections and seal gap measurements for the internal and external floating roofs; the most recent volatile organic compound (VOC) emissions performance test report for the truck loading rack control device; temperature monitoring data for the control device; and semi-annual compliance monitoring report required by the NESHAP Subpart R.

72. On February 25, 2019, EPA issued Peerless a request for information under Section 114 of the Act, Reference Number CAA-02-2019-1454 ("Information Request"). The Information Request required Peerless to conduct an engineering investigation of the integrity and adequacy of IFR tanks 4, 501, and 811, storing gasoline, which included, among other things, a visual inspection of each IFR and its primary and secondary seals at tanks, and sampling at such IFR tanks to determine the concentration of vapors in the headspace between the IFR and fixed roof in terms of the percent of the lower explosive limit ("LEL") for such vapors. In addition, the Information Request required Peerless to conduct an engineering evaluation of the operational condition, integrity and adequacy of EFR tanks 1213 and 1214, storing gasoline, which included, among other things, an evaluation of the vacuum breakers, including the vacuum breaker located on the west side of the Tank 1214 EFR, and measurements of VOC concentrations at the surface

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along the circumference of the cover well and leg-leg guide interfaces of the vacuum breaker in accordance with EPA Method 21.

73. On May 7, 2019, in accordance with the Information Request, Peerless submitted the findings from the visual inspections and LEL sampling at IFR tanks storing gasoline.

*IFR Tank 4*

74. The results of the visual inspection of the IFR for Tank 4, conducted on April 25, 2019, indicated that gasoline product had accumulated on the IFR, and that the secondary seal was detached from the IFR wall.

75. The results of the LEL measurements taken within the headspace of Tank 4, on April 25, 2019, indicated that Tank 4 was operating with gasoline vapor concentrations in the headspace of 100% of the LEL, and that the LEL monitor's sensor became saturated with hydrocarbons during the measurements.

76. The National Fire Protection Association ("NFPA") safety standard provides that the lower flammability limit (i.e., LEL) inside tanks should not exceed 25%.

77. Both the average and maximum LEL levels measured within Tank 4 on April 25, 2019, were substantially greater than the level established by the NFPA for safe operations.

78. During an August 12, 2019, conference call between EPA and Peerless, Peerless informed EPA that Tank 4 had been emptied of product and was considered gas-free, and that an API 653 inspection had also been completed.

79. On January 19, 2021, Peerless submitted an "In-Service" notification to EPA for Tank 4, indicating that Tank 4 would be placed back in service around the end of January of 2021. Prior to placing Tank 4 back in service, on January 28, 2021, Peerless conducted seal gap measurements and an out-of-service inspection of the new IFR installed in January of 2021. The inspection indicated that no seal gaps were measured and that the new Tank 4 IFR had no

defects.

*Truck Loading Rack Flare*

80. On November 4, 2019, EPA conducted an inspection at the Facility ("2019 Inspection") to evaluate compliance with the applicable regulations cited above.

81. In response to the 2018 Inspection and the 2019 Inspection, and EPA's subsequent inquiries regarding the efficiency of the Facility's Flare, on December 11, 2019, Peerless collected samples of the vent gas being combusted at the Facility truck loading rack flare.

82. On March 12, 2020, Peerless submitted a report entitled "Collection of Fuel Vapor Samples From the Truck Loading Rack Vapor Recovery Line Into the Flare Unit Under Different Fuel Loading Scenarios, For the Determination of the Fuel Chemical Components and Characteristics at Peerless Oil and Chemicals Facilities [sic] in Peñuelas, Puerto Rico." The report provided the results of the December 11, 2019, vent gas sampling, including "chemical composition and characterization of the fuel vapors from the Truck Loading Rack into the Flare Unit…during four different fuel loading scenarios, to describe the actual load to the Flare Unit."

83. The laboratory analysis of the vent gas samples collected on December 11, 2019, showed the net heating value of vent gas from the Facility's truck loading rack ranged from 42 Btu/scf – 119 Btu/scf, which is substantially less than 300 Btu/scf.

84. At the time the December 11, 2019, vent gas samples were taken, Peerless did not, and had not in recent years, used any supplemental fuel to increase the net heating value of the vapors routed to the flare for combustion.

85. During the week of December 7, 2020, Peerless completed work on a flare upgrade project that included, among other things, replacement of the two-stage burners with a new one-stage anti-flashback John Zink Co. burner, including a flame arrester and a new connection for adding supplemental fuel to the flare as necessary, and installation of a new programmable logic

control ("PLC") system for controlling and monitoring flare operations, including an operator interface panel and a digital recorder.

86. On January 19, 2021, Peerless conducted a performance test for the upgraded flare, and submitted the "Flare Compliance Test Report" to EPA on March 8, 2021.

*EFR Tank 1214*

87. On March 16, 2019, Peerless submitted its response to the Information Request regarding the engineering investigation of EFR storage tanks. In response to Item 1.g. of the Information Request, Peerless submitted a "Measurement of Seal Gap and Floating Roof Inspection" report for Tank 1214, conducted by Big Dog Consulting, Inc. This report identified a rim seal gap of 2.25 inches at the Tank 1214 secondary seal, measured on June 14, 2018. The report includes a drawing of the EFR indicating a rim seal gap of 2.25 inches measured at the anti-rotation device, a calculation that references the 2.25-inch seal gap, and a certification that the EFR was not in compliance with the applicable rim seal gap requirements.

88. In a September 16, 2019, email from Peerless to EPA, Peerless submitted a June 10, 2019, report by Big Dog Consulting, Inc., "Measurement of Seal Gap and Floating Roof Inspection," indicating that no secondary seal gaps were measured on Tank 1214 following repairs to the tank's EFR. Peerless continued to operate Tank 1214 from June 14, 2018, when the 2.25-inch seal gap was measured, through June 10, 2019, when Peerless completed repairs of the EFR at Tank 1214 and corrected the rim seal gap.

89. On December 7, 2020, Peerless measured a gap of 2" at the secondary seal of Tank 1214. In a January 14, 2021, email from Peerless to EPA, Peerless stated that Tank 1214 was taken out of service as of January 11, 2021. On January 18, 2021, Peerless submitted a "Measurement of Seal Gap and Floating Roof Inspection" report for Tank 1214, conducted by Big Dog Consulting, Inc., which indicated that the "bar was in the slot of the primary seal" when the

December 7, 2020, seal gap measurement was taken.

*IFR Tank 8*

90. During the 2019 Inspection, EPA inspectors used a FLIR camera to observe IFR storage tanks containing gasoline and noted elevated emissions of VOCs from perimeter vents on Tank 8. These findings were shared with Peerless at the conclusion of the 2019 Inspection; the videos of the FLIR camera observations were shared with Peerless on November 19, 2019.

91. On September 30, 2020, as part of an enhanced monitoring program agreed to between Peerless and EPA following the 2019 Inspection, Peerless took LEL measurements within the headspace of Tank 8, which indicated that Tank 8 was operating with gasoline vapor concentrations in the headspace of 100% of the LEL, and that the LEL monitor's sensor became saturated with hydrocarbons during the LEL measurements.

92. On December 17, 2021, Peerless informed EPA of the Tank 8 LEL measurement taken on September 30, 2020.

93. In a January 12, 2021, email, and a January 19, 2021, letter, Peerless informed EPA that Tank 8 was emptied and taken out of service on January 1, 2021.

94. According to information provided by Peerless during an EPA inspection of the Facility on April 25, 2022, Tank 8 was placed back in service during the first week of January 2022 following repairs to the tank's IFR. The Tank 8 repairs included replacement of the secondary seal and membrane.

## E. ALLEGED VIOLATIONS OF LAW

Based on the Stipulated Facts set forth above, EPA reaches the following Alleged Violations of Law:

95. The Respondent is a "person," within the meaning of Section 302(e) of the Act.

96. Respondent is the "owner or operator" of the Facility, as that term is defined in CAA Section 112(a)(9) and in 40 C.F.R. § 63.2.

97. The Facility is a "stationary source," as that term is defined in Section 112(a)(3) of the Act, and 40 C.F.R. § 63.2.

98. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the NESHAP Subpart R regulation, 40 C.F.R. § 63.420 *et seq*.

99. From at least December 11, 2019, through January 19, 2021, Peerless failed to operate its truck loading rack flare only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater, in violation of 40 C.F.R. § 63.11(b)(6) (as referenced in Table 1 of 40 C.F.R. Part 63, Subpart R) and Section 112 of the CAA.

100. From at least April 25, 2019, through on or around August 12, 2019, Peerless failed to operate and maintain Tank 4 and its associated air pollution control equipment, specifically, the internal floating roof, in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violations of 40 C.F.R. § 63.6(e) (as referenced in Table 1 of 40 C.F.R. Part 63, Subpart R) and Section 112 of the CAA.

101. From at least July 30, 2018[1] through June 10, 2019, Peerless failed to make necessary repairs or empty Tank 1214, an external floating roof gasoline tank, within 45 days of the identification of a secondary seal gap exceeding 1.27 cm, in violation of 40 C.F.R. § 63.425(d), (which cross-references 40 C.F.R. § 60.113b(b)(4)(ii)(B)) and Section 112 of the CAA.

102. From at least September 30, 2020, through January 1, 2021, Peerless failed to operate and maintain Tank 8 and its associated air pollution control equipment, specifically, the internal floating roof, in a manner consistent with safety and good air pollution control practices for

[1] July 30, 2018 is the first day the violation accrued, which is 45 days after measuring the seal gap during the June 14, 2018 tank inspection.

minimizing emissions, in violation of 40 C.F.R. § 63.6(e) (as referenced in Table 1 of 40 C.F.R. Part 63, Subpart R), and Section 112 of the CAA.

## F. TERMS OF CONSENT AGREEMENT

103. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;

b. neither admits nor denies the factual allegations and alleged violations of law stated above;

c. consents to the assessment of a civil penalty as stated below;

d. consents to the issuance of any specified compliance or corrective action order, as applicable under this Consent Agreement;

e. consents to the conditions specified in this Consent Agreement;

f. consents to any stated "permit action" (as that term is defined in 40 C.F.R. § 22.3(a) of the Consolidated Rules), as applicable;

g. waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

h. waives the right to appeal the Final Order accompanying this Consent Agreement.

104. For the purpose of this proceeding, Respondent:

a. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;

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b. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

c. consents to the issuance of the attached Final Order;

d. waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

e. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Puerto Rico; and

f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

105. *Civil Penalty.* Pursuant to Section 113(d) of the Act, Respondent shall pay the civil penalty of **$287,756** ("EPA Penalty") within thirty (30) calendar days of the effective date specified in Section H of this Consent Agreement ("Effective Date"). Respondent shall pay the EPA Penalty using a method provided on the website https://www.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket No. CAA-02-2023-1212." Within 24 hours of payment of the EPA Penalty, Respondent shall send proof of payment to the following:

Robert Buettner, Chief, Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007
buettner.robert@epa.gov

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel

U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007
villatora.liliana@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, and identified with "Docket No. CAA-02-2023-1212," and any other information required to demonstrate that payment has been made according to the applicable payment method.

106. If Respondent fails to timely pay the full amount of the EPA Penalty assessed under this Consent Agreement, the EPA may:

a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

*Conditions of Settlement*

107. Work already completed. Prior to the Effective Date of this Agreement, Peerless completed a project at the Facility truck loading rack Flare to improve the Flare's combustion efficiency and control device monitoring, and conducted additional visual inspections, LEL measurements, and EPA Method 21 monitoring at the Facility gasoline storage tanks to evaluate the condition and operation of the IFR and EFR emission controls. This work included the following:

a. Flare:

i. Peerless completed work on a Flare upgrade project that included the installation of a new one-stage anti-flashback burner, which included a flame arrester and new connection piping for adding supplemental fuel to the Flare as necessary; and

ii. Installation of a new PLC system/platform for controlling and monitoring Flare operations, including an operator interface panel and a digital recorder.

b. Gasoline storage tanks:

i. Peerless conducted LEL monitoring at IFR tanks storing gasoline, visual inspections and EPA Method 21 monitoring at EFR tanks storing gasoline (vacuum breakers and rim seals), consisting of four quarterly monitoring events from October 2020 through December 2020; January 2021 through March 2021; April through June 2021; and July through September 2021.

ii. Peerless took corrective action based on inspections, LEL measurements, and Method 21 monitoring at various tanks, including taking Tank 8 and Tank 1214 out of service for repairs, and installation of a new IFR on Tank 4.

iii. Peerless purchased an optical gas imaging infrared camera designed for and capable of detecting hydrocarbon and VOC emissions from IFR and EFR tanks. Peerless trained facility personnel to use the optical gas imaging camera to screen for potential emissions from tanks and to identify potential components or equipment in need of repair or replacement.

iv. Peerless developed a written tank monitoring procedure and checklist, included in this Agreement as Exhibit A, which includes the use of the optical gas imaging infrared camera to screen for potential emissions from tanks and to identify potential components or equipment in need of repair or replacement.

108. Conditions. As a condition of settlement, Respondent agrees to each of the terms in Paragraphs 109 through 121 of this Agreement.

109. Terminal Storage Tanks Enhanced Inspection Program. **Starting no later than 60 Days after the Effective Date of this Agreement,** and continuing on a monthly basis thereafter for a period of 12 consecutive calendar months, Peerless shall perform optical gas imaging camera inspections at all Facility storage tanks equipped with an IFR or EFR, which store gasoline or any gasoline blend stock with a true vapor pressure greater than 0.5 psi, to determine whether VOC emissions are detected from any such tank ("Infrared Camera Inspections"), and shall conduct any required repairs, corrective actions and re-monitoring, as specified below.

110. Peerless shall ensure that all Infrared Camera Inspections conducted pursuant to this Agreement are performed by individuals, whether employees of a third-party vendor or Peerless personnel, who have received training in infrared gas imaging camera fundamentals and operation and who maintain proficiency with the infrared gas imaging camera through regular use.

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111. Peerless shall ensure that all Infrared Camera Inspections conducted pursuant to this Agreement are performed in accordance with the checklist developed by Peerless and included in this Agreement as Exhibit A, and with the following requirements:

a. the infrared gas imaging camera shall be capable of imaging organic gases that absorb infrared light in approximately the 3.2 to 3.4 micron range, and have an automatic mode (for thermal contrast and brightness) for all Infrared Camera Inspections;

b. all Infrared Camera Inspections shall be conducted in automatic mode and in gray scale;

c. for IFR tanks, Peerless shall select the Polarity in order to achieve the maximum contrast of the VOCs with the sky background condition;

d. for EFR tanks, Peerless shall select the Polarity in order to achieve the maximum contrast of the VOCs with tank background;

e. all Infrared Camera Inspections for IFR tanks shall be conducted from ground level at a distance of no greater than 50 feet from the tank perimeter roof vents, and Peerless shall image all tank perimeter roof vents;

f. All Infrared Camera Inspections for EFR tanks shall be conducted from the tank's top platform, when the tank is at least 50% full whenever possible. The EFR inspections shall include a survey of all EFR components that are potential sources of emissions, including, but not limited to, rim seals, vacuum breakers, roof legs, and access hatches.

g. Peerless shall conduct all Infrared Camera Inspections only when the tanks are idle (neither filling nor being drawn down); and

h. Peerless shall conduct all Infrared Camera Inspections only at times when the wind speed is forecasted to be greater than 5 mph and less than 15 mph.

112. IFR tanks. If the infrared gas imaging camera operator observes emissions during any Infrared Camera Inspection conducted at tanks with an IFR pursuant to this Agreement:

a. an infrared camera video recording shall be made immediately and during the inspection in which the operator observes emissions, in accordance with the requirements of Paragraph 111; and

b. Within 72 hours of the initial observation of emissions, Peerless shall conduct an IFR Visual Inspection of the IFR tank and measure the tank's LEL level. The Visual Inspection of the tank shall be through roof openings and shall include an inspection of the IFR and rim seal(s). Specifically, the term "IFR Visual Inspection" as used in this Agreement means the process of visually inspecting an IFR and the primary seal or the secondary seal (if one is in service) to determine if the IFR is not resting on the surface of the liquid inside the storage tank; if there is liquid accumulated on the roof; if the seal is detached; if there are holes or tears in the seal fabric; if there are visible gaps between the seals(s) and the wall of the tank; or if there are any vents or openings that are not maintained in the closed position. For purposes of this Agreement, "LEL" means the minimum concentration of a specific vapor or gas in air, below which propagation of a flame does not occur in the presence of an ignition source.

113. Procedures for measuring LEL percentage. For all LEL measurements conducted pursuant to Paragraph 112.b of this Agreement, Peerless shall follow these procedures:

a. The LEL measurements shall be conducted by sampling the vapor space within three (3) feet of the top of the IFR using an LEL meter with data logging capability;

b. The IFR shall not be in motion during sampling;

c. The LEL meter shall be calibrated prior to each use, and the date and time shall be set to local time. If extended sample collection tubing for the LEL meter will be used,

Peerless shall demonstrate that the LEL meter is capable of being successfully calibrated with the length of sample tubing to be used;

d. Data logging of the LEL measurements shall be in 15-second intervals and measurements shall be done for 35 minutes, with the first 5 minutes of data to be disregarded. Peerless shall calculate a 30-minute average of valid LEL measurements, i.e., the average of the valid data for minute 6 through minute 35, as adjusted using the appropriate correction factor(s) ("30-Minute Average LEL Measurement"); and

e. LEL measurements shall be adjusted using LEL correction factor(s) specific to the LEL meter being used, and based on the liquid being stored in the tank (e.g., a gasoline correction factor is to be used for light reformate, gasoline, and naphtha, and an ethanol correction factor is to be used for ethanol).

f. Respondent shall keep complete records of the measurements conducted under this Paragraph.

114. If, during any IFR Visual Inspection or LEL measurements required by Paragraphs 112 and 113 of this Agreement:

a. the internal floating roof is not resting on the surface of the liquid inside the tank and is not resting on the leg supports;

b. there is liquid on the floating roof;

c. the seal(s) is(are) detached;

d. there are holes or tears in the seal fabric;

e. there are visible gaps between the seals(s) and the wall of the tank;

f. there are any vents or openings required to be maintained in the closed position but that are not closed; or

g. the 30-minute Average LEL Measurement is greater than 25% of the LEL:

Then Peerless shall, within 45 Days of the IFR Visual Inspection or LEL measurement, repair the items to correct the specific failure(s) discovered ("Required IFR Repairs").

115. After completion of any Required IFR Repairs, Peerless shall conduct an Infrared Camera Inspection on the affected tank within 7 calendar days of completing such repairs, to confirm that the specific failure(s) was(were) corrected and the tank is in good working order.

a. If Peerless does not observe any emissions during this follow-up Infrared Camera Inspection, then Peerless shall resume the regular monthly Infrared Camera Inspections under Paragraphs 109 through 111 of this Agreement.

b. However, if emissions are observed during the follow-up Infrared Camera Inspection, Peerless shall follow the process set forth in Paragraphs 112 through 114 again, and shall conduct another follow-up Infrared Camera Inspection within 7 calendar days of completing such repairs. If, after the second attempt at making Required IFR Repairs, emissions are still observed during the follow-up Infrared Camera Inspection, Peerless shall promptly consult with EPA on an appropriate course of action to address the emissions. Peerless shall initiate this consultation within 5 calendar days of making the second unsuccessful attempt at making Required IFR Repairs.

116. EFR Tanks. If the infrared gas imaging camera operator observes emissions in AUTO mode during any Infrared Camera Inspection conducted at tanks with an EFR pursuant to this Agreement:

a. an infrared camera video recording shall be made immediately and during the inspection in which the operator observed emissions, in accordance with the requirements of Paragraph 111; and

b. Within 72 hours of the initial observation of emissions, Peerless shall conduct an EFR Visual Inspection of the EFR tank. The EFR Visual Inspection shall be conducted from the EFR deck and shall include inspection of the EFR rim seal(s). Specifically, the term "EFR Visual Inspection" as used in this Agreement means the process of visually inspecting the EFR and the primary seal, secondary seal, and fittings to determine if the external floating roof has any defects; if the primary seal has holes, tears, or other openings in the seal or the seal fabric; if the secondary seal has holes, tears, or other openings in the seal or the seal fabric; if there are visible gaps between the seals(s) and the wall of the tank; if there are any vents or openings that are not maintained in the closed position; and to verify whether the vacuum breaker is in the closed position and to assess the condition of the vacuum breaker gasket.

117. If, during any EFR Visual Inspection required by Paragraph 116.b:

a. the EFR or any EFR components have any defects;

b. the primary seal has holes, tears, or other openings in the seal or the seal fabric (or the seal is detached);

c. the secondary seal has holes, tears, or other openings in the seal or the seal fabric (or the seal is detached);

d. there are visible gaps between the seals(s) and the wall of the tank;

e. there are any openings required to be maintained in the closed position but that are not closed; or

f. the vacuum breaker is not in the closed position or the gasket is deteriorated:

Then Peerless shall, within 45 Days of the Visual Inspection, repair the items to correct the specific failure(s) discovered ("Required EFR Repairs").

118. After completion of any Required EFR Repairs, Peerless shall conduct an Infrared Camera Inspection on the affected tank within 7 calendar days of completing such repairs, to confirm that the specific failure(s) were corrected and the EFR tank is in good working order.

a. If Peerless does not observe any emissions during this follow-up Infrared Camera Inspection in AUTO mode, then Peerless shall resume the regular monthly Infrared Camera Inspections under Paragraphs 109 through 111 of this Agreement.

b. However, if emissions are observed during the follow-up Infrared Camera Inspection (i.e., following any Required EFR Repairs), then Peerless shall take additional action in accordance with Paragraphs 119 and 120 of this Agreement.

119. If emissions are observed during any follow-up Infrared Camera Inspection required under Paragraph 118 of this Agreement (i.e., following any Required EFR Repairs), then Peerless shall use additional means, including, but not limited to, EPA Method 21 monitoring and/or seal gap measurements in accordance with 40 C.F.R. Part 60, Subpart Kb, to identify the potential source(s) of the observed emissions (e.g., from rim seals, vacuum breakers, roof legs, access hatches).

a. Secondary seal gap measurements shall be conducted in accordance with the procedures in 40 C.F.R. § 60.113b(b)(2) through (4).

b. VOC concentrations along the EFR rim seals or the surface along the circumference of the cover-well interface and the leg-leg guide interface of the vacuum breaker shall be measured using EPA Method 21, as adjusted using the applicable correction factor for gasoline vapor, and shall be conducted during periods when the ambient wind speed is less than 5 miles per hour.

c. Respondent shall keep complete records of the measurements and inspections conducted under this Paragraph.

120. Corrective action for EFR tanks.

a. For any findings of the EFR Visual Inspection or deviations from the rim seal gap measurement requirements (for primary or secondary seals), Respondent shall follow the requirements in 40 C.F.R. § 60.113b(b)(4).

b. For any Method 21 measurements greater than 500 ppm (after the measurements are adjusted using the applicable correction factor for gasoline vapor) at an EFR rim seal, within 10 calendar days of recording any reading greater than 500 ppm, and to the extent practicable when the tank's product level is the same as the when the greater than 500 ppm measurement(s) were made, Respondent shall perform a sight/sound/smell inspection of the rim seal location(s) where high readings are identified, and shall make any necessary adjustments or repairs. Respondent shall repeat the Method 21 readings within 15 calendar days of completing the initial corrective action and shall take any additional follow-up corrective actions, if necessary, to bring the VOC concentrations to 500 ppm. If VOC concentrations cannot be reduced below 500 ppm after the second attempt at corrective action, Respondent will promptly consult with EPA to agree on a proper course of action. Respondent shall initiate this consultation within 5 calendar days of making the second unsuccessful attempt at corrective action.

c. If all Method 21 readings recorded for any EFR rim seal are below 500 ppm (adjusted using correction factor for gasoline vapor), no further action is required unless and until the requirements in Paragraphs 116 and 117 of this Agreement are triggered again.

d. For any findings of a vacuum breaker in the open position, gasket deterioration, or Method 21 measurements greater than 500 ppm (after the measurements are adjusted using the applicable correction factor for gasoline vapor), Respondent shall submit a

written description to EPA of the completed or planned corrective action(s) to address the findings within 15 calendar days of the visual inspection and/or VOC concentration measurements. Following submission of each written description, Respondent and EPA will promptly consult with one another to determine if the completed or planned corrective action is effective.

121. Reporting. Respondent shall submit to EPA the following information to ensure and verify that the above conditions are satisfied:

a. For all Infrared Camera Inspections that have triggered visual inspections, LEL measurements, seal gap measurements, or Method 21 concentration measurements and corresponding corrective action, Respondent shall submit to EPA all associated inspection checklists and reports, measurement and monitoring data, and infrared camera video files and images within 10 calendar days of completing such inspection or conducting the required measurements or monitoring. In the event a contractor is used for the inspections, measurements, and/or monitoring, Respondent shall provide the relevant documentation within 10 calendar days of receipt from the contractor, but in no event later than 30 calendar days afer completion of the inspections, measurements, and monitoring.

b. For any Infrared Camera Inspection that does not trigger any corrective action, Respondent shall submit to EPA, on a quarterly basis, the completed inspection checklist(s), and, as appropriate, any infrared camera video files and images taken.

c. When any corrective action requirements are triggered under the terms of this Agreement due to findings from any inspection, measurement, or monitoring provision in this Agreement, Respondent shall submit the complete corresponding documentation for all repairs and any other correction actions taken, within 10 calendar days of completion.

d. All information required to be submitted under this Paragraph shall be sent by electronic mail to the following:

Alex Rivera
rivera.alex@epa.gov

and

Robert Buettner
buettner.robert@epa.gov

and

Liliana Villatora
villatora.liliana@epa.gov

122. Nothing in this Agreement shall relieve Peerless of its obligations, under local, state, or federal law, to ensure the safety of the public or its workforce.

123. Respondent agrees that the time period from the Effective Date of this Agreement until all of the Conditions specified in Paragraphs 109 through 121 of this Agreement are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section E of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

124. Force majeure. Respondent agrees to comply with and abide by the following:

a. Respondent shall carry out and perform the terms, conditions and requirements of this Consent Agreement within the time limits established in or pursuant to this Consent

Agreement, unless such compliance or performance, in whole or in part, is prevented or delayed by any event(s) that constitutes a force majeure.

b. For purposes of this Consent Agreement, a force majeure is defined as any event(s) arising from a cause(s) or a circumstance(s) not reasonably foreseeable and beyond Respondent's control, and which event(s) could not be overcome or obviated by due diligence, and which prevents performance, in whole or in part, by a date required by this Consent Agreement. A force majeure event(s) specifically does not, and shall not, include unanticipated or increased costs or expenses of complying with or performing the terms, conditions and requirements of this Consent Agreement and inability to pay the civil penalty.

c. Whenever a cause(s) or a circumstance(s) occurs that might delay the completion or performance, in whole or in part, of any term, condition or requirement of this Consent Agreement, Respondent shall notify EPA of said cause(s) or circumstance(s) within five (5) calendar days after Respondent first became aware or should have become aware of such a cause(s) or circumstance(s). Such notice shall be sent to the EPA contacts listed in Paragraph 121.d., above, at their respective addresses and via email. Such notice shall specifically include the reasons for and the anticipated duration of the delay, any action Respondent has taken or will take to prevent and/or minimize the delay, and a timetable estimating implementation of the aforementioned measures to prevent and/or minimize the delay.

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d. Respondent's failure to timely comply with the aforementioned notice provision shall constitute a sufficient ground for EPA to deny Respondent an extension of time to complete performance.

e. Respondent shall adopt and undertake all reasonable measures to prevent and/or minimize the aforementioned delay.

f. Respondent shall have the burden, by a preponderance of the evidence, of proving force majeure as a defense to any noncompliance with, or non-performance of, in whole or in part, any term, condition or requirement of this Consent Agreement. If EPA agrees that the given delay is attributable to force majeure, then the time for performance of the obligations that are directly affected by the force majeure event will be extended for a period of time determined by EPA, not to exceed the actual duration of the delay caused by the force majeure event. An extension of time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any other obligations.

125. The provisions of this Consent Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 123, Respondent must give written notice and a copy of this Consent Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Consent Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

126. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

127. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

128. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

129. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was, upon information and belief, at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

130. Except as qualified by Paragraph 1066.a, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

131. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability to the United States for federal civil penalties for the violations specifically alleged above.

132. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

133. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

134. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

135. Any violation of this Final Order may result in EPA pursuing a civil judicial action for an injunction or civil penalties of up to $117,468 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action. Respondent reserves and may assert any available argument and defense and may use any information submitted under this Consent Agreement and Final Order, in response to any such action pursued by EPA.

136. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

137. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

138. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil

penalties for any violation described herein. Under such circumstance, Respondent reserves the right to assert any available argument and defense to any such claim by EPA. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

## H. EFFECTIVE DATE

139. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

## Signatures

The foregoing Consent Agreement In the Matter of Peerless Oil and Chemicals Inc., Docket No. CAA-02-2023-1212, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

September 26, 2023

Eng. Luis Vazquez
General Manager
Peerless Oil and Chemicals Inc.
671 Road 337
Peñuelas, Puerto Rico 00624-9802

FOR COMPLAINANT:

CARMEN GUERRERO PEREZ

Digitally signed by CARMEN GUERRERO PEREZ
Date: 2023.09.29 11:24:12 -04'00'

September 29, 2023, 2023

Carmen Guerrero, Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency, Region 2

## FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of EPA Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Peerless Oil and Chemicals Inc.*, CAA-02-2023-1212. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified and issued. The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

**So ordered.**

LISA GARCIA Digitally signed by LISA GARCIA Date: 2023.09.29 12:53:42 -04'00'

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

DATE: September 29, 2023