

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, California 94105

\*\* FILED \*\*  
17AUG2018 - 12:05PM  
U.S.EPA - Region 09

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2018-0012
	)	
INVENTURE FOODS, INC.	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
Goodyear, Arizona	)	<b>AND FINAL ORDER</b>
	)	
Respondent.	)	<i>Class II Administrative Penalty Proceeding</i>
	)	<i>under Section 309(g) of the Clean Water Act,</i>
	)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
	)	<i>22.13(b) and 22.18</i>
	)	
	)	

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY AND PARTIES**

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(B) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 307 of the Act, 33 U.S.C. § 1317. The Administrator has delegated this authority to the Regional Administrator of the EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Inventure Foods Inc.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

**II. STATUTORY AND REGULATORY FRAMEWORK**

5. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits any owner or operator of any source to operate any source in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307(b) of the Act, 33 U.S.C. § 1317(b).

6. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled General Pretreatment Regulations.
7. The General Pretreatment Regulations at 40 C.F.R. Part 403 relevant to this matter include:
  - a. 40 C.F.R. § 403.3(q) (Publicly Owned Treatment Works), which defines a POTW to mean a treatment works as defined by CWA § 212, 33 U.S.C. § 1292, which is owned by a State or municipality, including any devices, methods, and /or systems that, at a minimum, store, treat, or dispose of municipal or industrial wastes, including waste in combined storm water and sanitary sewer systems.
  - b. 40 C.F.R. § 403.3(f) (Control Authority), which defines a Control Authority, in relevant part, to mean either, EPA, the State, or the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of 40 C.F.R. § 403.11.
  - c. 40 C.F.R. § 403.3(j) (Industrial User), which defines an industrial user as a source of Indirect Discharge, which in turn is defined at 40 C.F.R. § 403.3(i) to mean the introduction of pollutants into a POTW from any non-domestic source regulated under CWA §§ 307(b), (c), or (d), 33 U.S.C. § 1317(b), (c), or (d).
  - d. 40 C.F.R. § 403.3(v)(ii) (Significant Industrial User), which defines a significant industrial user as one designated as such by the Control Authority because it has a reasonable potential for adversely impacting the POTW's operations.
  - e. 40 C.F.R. § 403.5(d) (Local limits), which provides that where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with the General Pretreatment Regulations at 40 C.F.R. § 403.5(c), such local limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the CWA.
  - f. 40 C.F.R. § 403.12(f) (Slug Discharge), requires Significant Industrial Users to notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings as defined by 40 C.F.R. § 403.5(b)
8. On December 5, 2002, EPA approved the State of Arizona's pretreatment program administered by the Arizona Department of Environmental Quality (ADEQ). 67 Fed. Reg. 79629 (Dec. 30, 2002). In December 2013, ADEQ approved the City of Goodyear's (City) Pretreatment Program.
9. As part of its Pretreatment Program, the City established local limits for pH (between 5.5 and 9.0 standard units), oil and grease (100 mg/L), biological oxygen demand (1100 mg/L), and total suspended solids (680 mg/L), in accordance with Article 12A-2-1 and 6 of the City Code.
10. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for CWA Section 301(a) violations that occurred on or after December 6, 2013. For violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, the EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

### **III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

11. Respondent is a Delaware corporation and therefore a person within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). At all times relevant to this action, Respondent owned and/or operated a snack food manufacturing facility located at 3500 South La Cometa in Goodyear, Arizona, hereinafter the "Facility."
12. The City of Goodyear owns and operates a POTW for the purpose of treating industrial and domestic wastewater. At all times relevant to this matter, Respondent discharged industrial wastewater to the City's POTW and is therefore an "industrial user" as defined by 40 C.F.R. § 403(3)(j).
13. Respondent's industrial waste is a "pollutant" as that term is defined by CWA Section 502(6), 33 U.S.C. § 1362(6).
14. Respondent has been engaged in manufacturing snack foods at the Facility since at least 1983, on a date best known to Respondent. The Facility discharges an average of 70,000 gallons of industrial process wastewater per day to the POTW and is a Significant Industrial User as that term is defined at 40 C.F.R. § 403.3(v)(ii).
15. On September 15, 2016, EPA inspected the Facility and its wastewater treatment system and found several operation and maintenance deficiencies. During a subsequent records review, EPA discovered multiple violations of the City's local limits for pH, oil and grease, biological oxygen demand, and total suspended solids.
16. On September 16, 2016, Respondent discharged a prohibited slug load and failed to immediately notify the City of this discharge as required by 40 C.F.R. § 403.12(f).
17. On February 22, 2018, EPA entered into an Administrative Order on Consent (EPA Docket No. CWA-309(a)-18-001) ("AOC") with Respondent to bring its System into compliance with the CWA's pretreatment requirements, and Respondent achieved compliance on March 30, 2018.

### **IV. ALLEGED VIOLATIONS**

18. Between August 26, 2014 and March 30, 2018, Respondent violated CWA Section 307(d), 33 U.S.C. § 1317(d) on at least twenty-four (24) days by operating a source in violation of pretreatment standards as established under Section 307(b) of the Act, 33 U.S.C. § 1317(b).

### **V. ADMINISTRATIVE PENALTY**

19. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of seventy-nine thousand and nine-hundred and seventy-nine dollars (**\$79,957**) within thirty (30) calendar days of the Effective Date, as defined in Section XIII below, of this CA/FO.
20. Respondent shall make penalty payment by one of the options listed below:
  - a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to the EPA shall be made through 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)

d. Online Payment: This payment option can be accessed from the information below

Go to [www.pay.gov](http://www.pay.gov)  
Enter "SFO Form Number 1.1." in the search field  
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

21. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact

person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.

22. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Mike Weiss  
Enforcement Division (ENF 3-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

23. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
24. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

#### **IX. APPLICABILITY**

25. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

#### **VIII. RESPONDENT'S ADMISSIONS AND WAIVERS**

26. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. Admits the jurisdictional allegations of the Complaint;
  - b. Except as set forth in Paragraph 26.a, neither admits nor denies the facts stipulated in this Consent Agreement;

- c. Consents to the assessment of the civil administrative penalty set forth in Section V of this Consent Agreement, and to all conditions specified in this CA/FO;
- d. Waives any right to contest the allegations set forth in this Consent Agreement, and
- e. Waives its right to appeal this proposed Final Order.

#### **X. RESERVATION OF RIGHTS**

- 27. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and in the AOC and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law and/or violations of the AOC.
- 28. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

#### **XI. ATTORNEY FEES AND COSTS**

- 29. Unless otherwise specified, each party shall bear its own attorney fees and costs.

#### **XIII. EFFECTIVE DATE AND TERMINATION**

- 30. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

#### **XIV. PUBLIC NOTICE**

- 31. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
- 32. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of Arizona regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9:



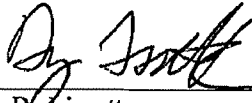
Kathleen H. Johnson, Director  
Enforcement Division  
U.S. EPA Region 9

July 9, 2018  
Date

Of Counsel:

Rich Campbell  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9

For Respondent Inventure Foods, Inc.



\_\_\_\_\_  
Dylan B. Lissette  
Chief Executive Officer

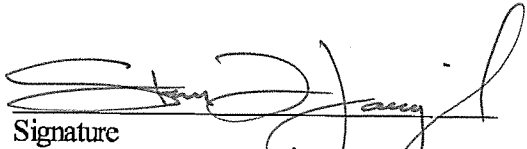
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Date



**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2018-0012) be entered and that Respondent shall pay a civil penalty in the amount of \$79,957 in accordance with the terms of this Consent Agreement and Final Order.

  
Signature  
Name: Steven L. Jaugiel  
Regional Judicial Officer  
U.S. EPA, Region IX

Date: 08/17/18

**CERTIFICATE OF SERVICE**

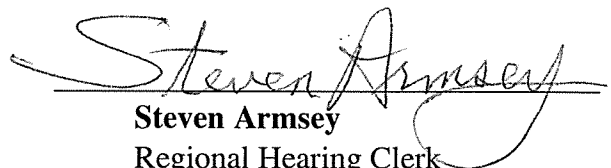
I hereby certify the attached Consent Agreement and Final Order was sent to Respondent by U.S. Certified Mail, Return Receipt Requested this 17<sup>th</sup> day of August, 2018 to:

Inventure Foods, Inc.  
3500 South La Cometa  
Goodyear, AZ 85338  
Certified Mail # 7015 3010 0000 3883 8124

I hereby certify a copy of the Consent Agreement and Final Order was delivered to the following Agency Attorney:

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

2018-08-17  
Date

  
Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne St, 12<sup>th</sup> Floor (ORC)  
San Francisco, CA 94105