



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	Docket No. CAA (112r)-09-2023-0019
)	
ACS, LLC)	
)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and ACS, LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(A) and (d), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C § 11045(c), for the assessment of a civil administrative penalty against Respondent for violations of Section 112(r) of the CAA and Section 312 of EPCRA.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a company incorporated in Arizona whose principal offices are located at 4102 South Avenue, Suite 3½ E in Yuma, Arizona.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

CAA § 112(r)

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and its implementing regulations, owners and operators of stationary sources producing, processing, handling or storing a chemical in 40 C.F.R. Part 68, or any other extremely hazardous substance, have a general duty to identify hazards that may result from releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
5. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.
6. Ammonia (anhydrous) is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Table 3.
7. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 - 68.185.

8. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).
9. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.
10. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
11. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
12. The Administrator of EPA may assess against any person who violates any provision of CAA § 112(r) a civil penalty of up to \$55,808 per day for each offense that occurred after November 2, 2015. *See* Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 986 (Jan. 6, 2023).
13. EPA and the United States Department of Justice (“DOJ”) jointly determined that this matter, although it involves alleged violations that occurred more than one year before

the initiation of this proceeding, is appropriate for an administrative penalty assessment.
See 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

EPCRA § 312

14. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under OSHA, 29 U.S.C. §§ 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form ("Inventory Form") containing information on hazardous chemicals present at the facility during the preceding calendar year above threshold planning quantities established in 40 C.F.R. § 370.20(b). This Inventory Form must be submitted by March 1 of each year to the State Emergency Response Commission, the Local Emergency Planning Committee, and the fire department with jurisdiction over the facility. 40 C.F.R. § 370.25.
15. Section 312 of EPCRA and its implementing regulations at 40 C.F.R. § 370.42 requires facility operators to report the maximum and average daily amount and location of the hazardous chemical present at the facility in its Inventory Form for each reporting year.
16. Ammonia is an "extremely hazardous chemical" as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. § § 11021(e) and 11022(c), with a threshold planning quantity ("TPQ") of 500 pounds. 40 C.F.R. Part 355, App. A & B.
17. The Administrator of EPA may assess against any person who violates any provision of EPCRA § 312 a civil penalty of up to \$67,544 for each offense that occurred after November 2, 2015. *See* Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 986 (Jan. 6, 2023).

C. GENERAL ALLEGATIONS

18. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 302(e) of CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
19. At all times relevant to this CAFO, Respondent operated a facility (the "Facility") located at 4102 South Avenue, Suite 3½ E, in Yuma, Arizona to provide pre-cooling and short-term storage for fresh vegetables harvested by local growers, including lettuce, cabbage, and brussels sprouts.
20. The real property and improvements thereto located at the Facility are a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).
21. At all times relevant to this CAFO, Respondent produced, used or stored more than 10,000 pounds of ammonia (anhydrous) at the Facility and was subject to the requirements of CAA § 112(r)(7).
22. At all times relevant to this CAFO, Respondent was subject to Program 3 requirements because it had public receptors within the distance to the endpoint for the worst-case release and was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.
23. On November 19, 2019, EPA performed an inspection of the Facility pursuant to Section 112(r) of CAA, 42 U.S.C. § 7412(r), Sections 304–12 of EPCRA, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a) (the "Inspection"). Based upon the information

gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA and EPCRA.

D. ALLEGED VIOLATIONS

Count 1

(Failure to Comply with Process Safety Information Requirements)

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 40 C.F.R. § 68.65(a) requires an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) to complete a compilation of written process safety information before conducting any process hazard analysis required under the rule. The compilation of written process safety information will enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances.
26. Under 40 C.F.R. § 68.65(c)(1)(iii), the owner or operator must compile information pertaining to the technology of the covered process including maximum intended inventory of regulated substances.
27. Based upon the Inspection and follow-up investigation, EPA determined that Respondent compiled an inaccurate maximum intended inventory of ammonia-containing process equipment at the Facility in 2019 and 2020.
28. Under 40 C.F.R. § 68.65(d)(1), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must compile information pertaining to the equipment in the covered process including piping and instrument diagrams (“P&IDs”) and relief system design and design basis.

29. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to compile adequate information for the Facility relating to the P&ID for the high-pressure receiver in 2019 and the relief system design and design basis from 2018 to 2022.
30. 40 C.F.R. § 68.65(d)(2) requires an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) to document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
31. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to document that certain process piping and equipment, an emergency shut-off valve on a portable unit for storage of ammonia, and a self-closing valve connected to process piping at the Facility complied with RAGAGEP in 2019.
32. Accordingly, EPA alleges that Respondent violated the process safety information requirements set forth at CAA § 112(r) and 40 C.F.R. § 68.65 from 2018 to 2022.

Count 2

(Failure to Comply with Process Hazard Analysis Requirements)

33. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. Under 40 C.F.R. § 68.67, an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform a Process Hazard Analysis (“PHA”) on processes covered by the CAA § 112(r) requirements to identify, evaluate, and control the hazards involved in the process.

35. Under 40 C.F.R. § 68.67(c), the owner or operator must perform a PHA that addresses the hazards of the process as well as any engineering and administrative controls applicable to the hazards and their interrelationships.
36. Based upon the Inspection and follow-up investigation, EPA determined that the PHA performed by Respondent for the Facility in 2016 and 2021 failed to adequately address process hazards during high ambient temperatures and identify engineering and administrative controls to address process hazards for multiple scenarios.
37. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.67(c) by failing to perform a PHA that addresses the hazards of the process as well as any engineering and administrative controls applicable to the hazards and their interrelationships in 2021.

Count 3

(Failure to Develop and Implement Adequate Operating Procedures)

38. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
39. Under 40 C.F.R. § 68.69(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, including but not limited to safety and health considerations.
40. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to develop adequate operating procedures for oil drainage for its leased portable ammonia equipment in 2019.

41. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.69(a), by failing to adequately develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information in 2019.

Count 4

(Failure to Conduct Adequate Inspections and Tests, and Correct Deficient Equipment)

42. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
43. Under 40 C.F.R. § 68.73, an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must perform inspections and tests on process equipment and correct deficiencies in equipment that are outside acceptable limits before further use, or in a safe and timely manner when necessary means are taken to assure safe operation.
44. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to conduct adequate inspection and tests related to the Critical Items Checklists for process equipment from 2018 to 2022.
45. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to address several pieces of equipment with deficiencies that were outside acceptable limits (collectively, “Deficient Equipment”) in 2018 and 2019.
46. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.73(d)(1) and (e), by failing to perform inspections and tests on process equipment from 2018 to 2022, and correct deficiencies in equipment that are outside acceptable limits before further use, or in a safe and timely manner when necessary means are taken to assure safe operation in 2018 and 2019.

Count 5

(Failure to Comply with Pre-Startup Safety Review Requirements)

47. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
48. Under 40 C.F.R. § 68.77(a), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must complete a pre-startup safety review (“PSSR”) for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.
49. Under 40 C.F.R. § 68.77(b), the PSSR must ensure that construction and equipment is in accordance with design specification; safety, operating, maintenance, and emergency procedures are in place and are adequate; a PHA has been performed for new stationary sources; and training of each employee involved in operating a process has been completed.
50. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to complete the PSSR for four projects at the Facility in 2019.
51. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.77(b), by failing to complete an adequate PSSR pre-startup safety review for the Facility in 2019.

Count 6

(Failure to Comply with Contractor Requirements)

52. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

53. Under 40 C.F.R. § 68.87(b), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must fulfill various responsibilities regarding contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process, including informing contractor owner or operator of the known hazards related to the contractor's work and the process and developing and implementing safe work practices to control the entrance, presence, and exit of the contractor owner or operator and contract employees in covered process areas.
54. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to fulfill owner or operator responsibilities related to periodic performance review for three contractors working on or around the covered processes at the Facility in 2019.
55. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.87(b), by failing to fulfill owner or operator responsibilities regarding contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process in 2019.

Count 7

(Failure to Comply with the Emergency Response Requirements)

56. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
57. Under 40 C.F.R. § 68.93(b), an owner or operator of a facility subject to the requirements of CAA § 112(r)(7) must coordinate response needs with local emergency planning and response organizations on an annual basis, including providing the local emergency planning and response organizations with copies of the stationary source's emergency

action plan, updated emergency contact information, and other information necessary for developing and implementing the local emergency response plan.

58. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to perform annual emergency response coordination activities with the local emergency planning and response organizations in 2018, 2020, and 2021.
59. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.93(b), by failing to coordinate response needs with local emergency planning and response organizations on an annual basis in 2018, 2020, and 2021.

Count 8

(Failure to Comply with the General Duty Clause)

60. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
61. CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), provides that owners and operators of a stationary source that produces, processes, handles, or stores a regulated substance (as defined in 40 C.F.R. § 68.130) have a general duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.
62. An owner or operator breaches its general duty under CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), if the owner or operator does not maintain a safe facility to prevent accidental releases.
63. A recognized hazard within the ammonia industries is when inspection and basic safety information is not maintained for ammonia equipment. One way to address this hazard is to have a qualified person inspect ammonia equipment on a regular basis and to take appropriate remedial action based on the results of the inspection. The failure or

malfunction of ammonia equipment is likely to cause harm, as it can result in a catastrophic release of ammonia.

64. Based upon the Inspection and follow-up investigation, EPA determined that Respondent failed to maintain inspection and basic safety information regarding nurse tanks used for off-season storage of ammonia (May through October of each year) consistent with industry practice and the standard of care for ammonia refrigeration systems in 2019.
65. A recognized hazard within the ammonia industries is when ammonia equipment is not properly labeled. Inadequately labelled ammonia equipment is likely to cause harm, as it can undermine effective response in the event of a catastrophic release of ammonia.
66. Based upon the Inspection and follow-up investigation, Respondent failed to properly maintain labels on the nurse tanks used for off-season storage of ammonia (May through October of each year) consistent with industry practice and the standard of care for ammonia refrigeration systems in 2019.
67. Respondent breached its general duty under CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), by failing to maintain a safe facility to prevent accidental releases in 2019.

Count 9

(Failure to Submit Correct Tier II Reports)

68. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
69. The Facility is required to prepare or have available an MSDS for a hazardous chemical under OSHA, and therefore is subject to the Section 312 Tier II inventory reporting requirements of EPCRA for hazardous chemicals present at the Facility during the preceding calendar year above TPQs established in 40 C.F.R. § 370.20(b).

70. Under 40 C.F.R. § 370.42(s), a facility subject to the Section 312 Tier II reporting requirements of EPCRA must provide a brief description of the precise location(s) of hazardous chemical(s) at the facility in its Inventory Form.
71. For reporting years 2017 and 2018, Respondent managed and/or stored anhydrous ammonia at the Facility in quantities exceeding the applicable TPQ for purposes of the Section 312 Tier II inventory reporting requirements of EPCRA.
72. For reporting years 2017 and 2018, Respondent failed to provide accurate information regarding off-season storage of anhydrous ammonia present at the Facility in its Inventory Forms.
73. Accordingly, EPA alleges that Respondent violated EPCRA § 312 and 40 C.F.R. § 370.42(s) by failing to provide accurate information regarding off-season storage of anhydrous ammonia at the Facility in 2017 and 2018.

E. RESPONDENT'S ADMISSIONS

74. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO, including the assessment of the civil administrative penalty under Section I.F of this CAFO and the Supplemental Environmental Project specified in Section I.G of this CAFO; (iv) waives, for the purpose of this proceeding, any right to contest the allegations contained in Section I.D of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

75. Respondent agrees to the assessment of a civil penalty of SEVENTY-FIVE THOUSAND THREE HUNDRED SEVENTY-THREE DOLLARS (\$75,373) for the claims set forth herein as final settlement of the civil claims against Respondent as alleged in Section I.D of the CAFO.

76. Respondent shall pay the assessed penalty according to the terms of this CAFO within thirty (30) days of the Effective Date of the CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods stated at: <https://www.epa.gov/financial/makepayment>.

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Tu.Ponly@epa.gov

Cynthia Steiner
Enforcement and Compliance Assurance Division (ENF-4-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Steiner.cynthia@epa.gov

77. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

G. SUPPLEMENTAL ENVIRONMENTAL PROJECT

78. Respondent has agreed to undertake a Supplemental Environmental Project (SEP) as part of the settlement of this matter, in accordance with all provisions of this Consent Agreement and the schedule set forth in Appendix A.
79. In implementing the SEP, Respondent shall provide the emergency response equipment specified in Appendix A to the identified emergency response organization to assist it in responding to emergencies in the community where Respondent operates and where chemical processes are undertaken that are regulated by the CAA § 112(r) and EPCRA. Respondent is obligated to expend no less than Ninety-Three Thousand dollars (\$93,000) associated with implementing the SEP.
80. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement. "Satisfactory completion" means completing the SEP in accordance with the requirements and schedules set forth in Appendix A. Respondent may use contractors or consultants in planning and implementing the SEP.
81. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of CAA 112(r) and EPCRA by enhancing the hazardous material incident response capabilities of first responders in the area and thereby minimizing the consequences of accidental releases which do occur. The SEP is not inconsistent with any provision of CAA 112(r) and EPCRA. The SEP

relates to the alleged violations and is designed to reduce the adverse impact to public health and/or the environment to which the alleged violations contribute. The violations increased the risks of accidental releases of hazardous chemicals, and the SEP will reduce the potential consequences of accidental releases which do occur.

82. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. All cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and Respondent, in good faith, estimates the cost to implement the SEP is Ninety-Three Thousand Dollars (\$93,000).
 - b. As of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.
 - c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.
 - d. Respondent has not received and will not receive credit for the SEP in any other enforcement action.
 - e. Respondent will not receive any reimbursement for any portion of the SEP from any other person.
 - f. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

- g. Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
 - h. Respondent has inquired of the SEP recipient whether each is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the SEP recipient that it is not a party to such a transaction.

- 83. For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

- 84. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to EPA and the DOJ and solely for the purpose of ensuring the accuracy of Respondent’s SEP cost certification.

- 85. Respondent shall send a confirmation email to EPA within ten (10) days of completing the purchase of the emergency equipment for the SEP recipients. Within thirty (30) days after completion of the SEP, Respondent shall submit a SEP Completion Report to EPA electronically. The SEP Completion Report shall contain the following information:
 - a. a detailed description of the SEP as implemented;
 - b. a description of any material problems encountered in completing the SEP and the solutions thereto;

- c. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, and/or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
- d. certification that each SEP has been fully implemented pursuant to the provisions of this CAFO;
- e. a description of the environmental and public health benefits resulting from the implementation of the SEP; and
- f. the following statement, signed by Respondent's officer or authorized representative of Respondent with knowledge of the SEP, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- 86. Respondent shall maintain, for a period of three (3) years from the date of submission of the SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Report and shall provide such documentation within fourteen (14) days of a request from EPA.
- 87. Respondent agrees that failure to submit the confirmation email and/or the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall become liable for stipulated penalties in accordance with Paragraph 95.

88. After receipt of the SEP Completion Report, EPA, after a reasonable opportunity for review, will notify Respondent in writing: (i) the project has been completed satisfactorily; (ii) identify any deficiencies in the SEP Completion Report itself and grant Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determine the project has not been completed satisfactorily.
89. If EPA elects to exercise options (ii) or (iii) in Paragraph 88 above, Respondent may object in writing to the notice of deficiency within ten (10) days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, which may be extended by the written agreement of both EPA and Respondent, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO.
90. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, its contractors, or third party implementers making reference to a SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, In the Matter of ACS, LLC,

taken by the U.S. Environmental Protection Agency to enforce federal environmental laws.”

91. If Respondent’s purchase of the emergency response equipment identified in Appendix A does not expend the full amount set forth in Paragraph 79, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase and provide additional emergency response equipment to one or more of the emergency response organizations identified in Appendix A.

H. STIPULATED PENALTIES

92. In the event that Respondent fails to submit a payment of the civil penalty to EPA by the deadline specified in Paragraph 76 of this CAFO, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter.
93. In the event that Respondent fails to satisfactorily complete the SEP as outlined above in Paragraphs 78-91 and Appendix A, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
94. If EPA determines that Respondent completely or substantially failed to implement the Purchase of Emergency Equipment SEP in accordance with this Agreement, Respondent shall pay a stipulated penalty in the amount of 110% of the estimated cost for each such project, as set forth in Appendix A.

95. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of Two Hundred Dollars (\$200) for each day the following submissions are late: (a) each notice required by this CAFO and (b) the SEP Completion Report required by Paragraph 85.
96. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section F of this CAFO.
97. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 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 CAFO or with the CAA or EPCRA and the implementing regulations.
98. 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 CAFO.

I. CERTIFICATION OF COMPLIANCE

99. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any CAA § 112(r) and EPCRA requirements that may apply to its ongoing operations.

J. RETENTION OF RIGHTS

100. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.D of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.D of the CAFO.
101. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

K. MISCELLANEOUS

102. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
103. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
104. Each party to this action shall bear its own costs and attorneys' fees.
105. Respondent consents to entry of this CAFO without further notice.

L. EFFECTIVE DATE

106. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued

by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

M. BINDING EFFECT

107. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
108. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

N. NOTICE

109. Except as otherwise provided in Section G, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence submitted from one party to another under this CAFO shall be addressed as follows:

To EPA:

Cyntia Steiner
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Steiner.Cyntia@epa.gov

With a copy to:

David Kim
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Kim.David@epa.gov

To Respondent:

Gary Anthony, General Manager
ACS, LLC
4102 S Ave, Suite 3½ E
Yuma, AZ 85365
GAnthony@acscool.com

With a copy to:

James T. Dufour
Dufour Law
819 F Street
Sacramento, CA 95814
dufourlaw@dufourlegal.com

FOR RESPONDENT, ACS, LLC.

2/4/23
DATE

Gary Anthony
NAME: GARY ANTHONY
TITLE: General Manager

FOR COMPLAINANT, EPA REGION IX:

DATE

AMY MILLER- Digitally signed by AMY
BOWEN MILLER-BOWEN
Date: 2023.02.27
16:26:27 -08'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Project Description – Overview

This Supplemental Environmental Project (“SEP”) consists of emergency response equipment to be purchased by ACS, LLC (“ACS”) for the Yuma Fire Department in Arizona to own and use. ACS will provide funding to the City of Yuma, Arizona, for the equipment described below within sixty (60) days following the Effective Date. Subsequently, the City of Yuma (on behalf of the Yuma Fire Department) will issue a purchase order and take delivery of the equipment described below. The SEP will be considered complete when each piece of equipment described below, or substantially similar equipment in the event the equipment listed below is not available, is delivered to the Yuma Fire Department. If necessary due to product availability or supply chain issues, substantially similar equipment will be purchased by the City of Yuma after consultation with the Yuma Fire Department. ACS shall complete this SEP no later than eight (8) months after the Effective Date.

Respondent alone selected the SEP recipient and specific equipment identified herein. This CAFO shall not be construed to constitute EPA approval or endorsement of the equipment or technology donated by Respondent in connection with the SEP undertaken pursuant to this Agreement.

A. Nexus to the Clean Air Act (CAA), Section 112(r), and the Emergency Planning and Community Right-to- Know Act (EPCRA), Section 313

This SEP enhances the capabilities of emergency responders, facilitates quick and efficient responses to actual and threatened releases associated with emergency events, and provides tangible environmental and public health benefits primarily for local communities located near ACS’s facility. Adequate nexus is deemed to exist between this SEP and alleged violations of section 112(r) of the CAA and section 113 of EPCRA as set forth in the Complaint in accordance with Category G (Emergency Planning and Preparedness) of EPA’s SEP Policy (2015 Update to the 1998 SEP Policy). SEP Category G furthers the ability of emergency response organizations to assess the dangers of hazardous chemicals that are present, develop emergency response plans to better respond to chemical incidents, and fulfill their obligations under EPCRA and the CAA within the same emergency planning district or state affected by the alleged violations and for which no federal financial assistance is available for the purchased materials funded by this SEP.

B. Nexus to Communities with Environmental Justice Concerns

The EPA has identified Yuma, Arizona area as an environmental justice community whose residents are overburdened by environmental pollution. The community is located next to a major highway, large numbers of regulated facilities, and areas with legacy pollution, leading community members to express concerns about their health, environment, and community. Data from the EPA’s Environmental Justice (EJ) screening and mapping tool EJScreen suggest a significant potential for EJ concerns in the area due to a combination of high pollution burden

and population vulnerability. This SEP will mitigate potential damage or reduce potential risks to local communities in with environmental justice concerns in the Yuma area.

C. Planned Purchase

Respondent proposes to expend \$93,000 toward the purchase of emergency response equipment for the Yuma Fire Department. Specifically, Respondent would purchase twenty-five (25) P25 compliant handheld radios to replace antiquated radios previously purchased in 2003. P25 was developed by the Federal Emergency Management Agency in the aftermath of the 9/11 tragedy to standardize digital radio communications amongst public safety agencies nationally and internationally. Accordingly, P25 standardizes interfaces between the various components of the land mobile radio systems used by emergency responders.

