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

2012 JUN 15 PM 4: 31

**U.S. EPA, REGION IX
REGIONAL HEARING CLERK**

DOCKET NO: CAA (112r)-09-2012-0008

**This ESA is issued to: Nikkiso Cryo, Inc.
4661 Eaker Street
North Las Vegas, NV 89081**

**For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Nikkiso Cryo, Inc., Facility at 4661 Eaker Street., North Las Vegas, NV 89081**

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Nikkiso Cryo, Inc., ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

- 1) Failure to establish and implement written procedures to maintain the ongoing mechanical integrity (MI) of the process equipment. 40 CFR §68.73(b) The facility's written procedures were inadequate because it did not provide step by step procedures required to maintain MI.
- 2) Failure to ensure that the frequency of inspections and tests is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience. 40 CFR §68.73(d)(3) The facility was unable to demonstrate that its MI activities conform to manufacturer's specifications and generally accepted good engineering practices.
- 3) Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures that affect a covered process. 40 CFR §68.75(a) The facility did not have written management of change procedures prior to June 2010.
- 4) Failure to certify, at least every three years, that it has evaluated its facility's compliance with the provisions of its prevention program to verify that its procedures and practices are adequate and being followed. 40 CFR §68.79(a) At the time of the inspection the facility had never conducted a compliance audit as required.
- 5) Failure to re-submit its RMP at least five years from the date of its previous re-submittal. 40 CFR §68.190(b)(1) The facility's re-submittal was due on June 18, 2009; however, the facility did not re-submit its RMP until August 10, 2010, or approximately 14 months late.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$5,680**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$5,680.00** in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center.

This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Karen Henry/Sheila Suarez
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (SFD-9-3)
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT -Nikkiso Cryo, Inc

Signature: _____

Date: 20 Apr 2012

Name (print): Kazuo Ishikura

Title (print): General Manager

FOR COMPLAINANT:

(Handwritten signature)

Date: 5 June 2012

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Jane Diamond
Superfund Director
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

(Handwritten signature: Steven L. Jawgiel)

Date: 06/15/12

Steven L. Jawgiel Chief
Judicial Officer
U.S. EPA Region IX