UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF: Kern Ice and Cold Storage, LLC, 120 30th Street Bakersfield, CA 93301 Respondent.	**Docket No.** CAA-09-2021-0034 **CONSENT AGREEMENT AND FINAL ORDER** **40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

3. Respondent is Kern Ice and Cold Storage, LLC.

4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to

settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. Respondent owns and/or operates a facility located at 120 30th Street, Bakersfield, California ("Facility"). Respondent's Facility is an ammonia refrigeration-based cold storage facility. The Facility is located within a populated residential, commercial, and industrial area and is adjacent to a significant roadway. At the Facility, Respondent handles, stores, and uses, and has handled, stored, and used, anhydrous ammonia.

8. On April 24, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a) ("Inspection"). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.

9. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty in the same manner and to the same extent as Section 654 of Title 29 to identify hazards which may result from accidental 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.

10. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

11. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

12. EPA and the United States Department of Justice jointly determined that this matter, although it involves violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 CFR § 19.4.

13. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by CAA Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

15. Anhydrous ammonia is a "regulated substance" listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). 40 C.F.R. § 68.130, Table 1.

16. At all times relevant to this CA/FO, Respondent produced, processed, handled, or stored anhydrous ammonia, a "regulated substance" within the meaning of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), at the Facility.

C. ALLEGED VIOLATIONS

COUNT I
(Failure to Identify Hazards: Inadequate Hazard Review)

17. Paragraphs 1 through 16, above, are incorporated herein in their entirety by this reference.

18. 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) or an extremely hazardous substance have a general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques.

19. One hazard assessment technique to identify hazards in the anhydrous ammonia industry is the performance of a hazard review, also called a hazard assessment or hazard evaluation. An adequate hazard review will generally result in the following information: hazards associated with the substance and the process, potential release scenarios developed from site specific hazard analysis or review, and facility or industry historical data, and the consequences of the release in each case.

20. Harm is likely to result if an adequate hazard review is not performed because it increases the risk that a dangerous situation will not be recognized and addressed in time to prevent a release or other harm.

21. Respondent did not conduct a hazard review using appropriate hazard techniques consistent with industry practice and the standard of care for ammonia refrigeration systems.

22. Accordingly, EPA alleges that Respondent failed to identify hazards which may result from accidental releases using appropriate hazard assessment techniques in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

COUNT II
(Failure to Design and Maintain a Safe Facility)

23. Paragraphs 1 through 16, above, are incorporated herein in their entirety by this reference.

24. 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) or an extremely hazardous substance have a general duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.

25. It is a recognized hazard within the anhydrous ammonia industries for a facility not to maintain design information necessary to understand and evaluate the functioning, limits, and capacity of its process equipment and protective systems (e.g., information to determine whether pressure relief systems are correctly sized and designed to provide adequate protection against overpressurization).

26. The failure to maintain necessary design information is likely to cause harm because it increases the likelihood that process equipment and protective systems are operated outside of safe limits or that malfunctions are not promptly recognized.

27. Respondent did not maintain necessary design information about the Facility's process equipment and protective systems consistent with industry practice and the standard of care for ammonia refrigeration systems.

28. Another hazard recognized in the anhydrous ammonia industries is when a facility lacks adequate safeguards at entrances to areas containing refrigeration equipment. One way to address this hazard is to install signage in appropriate locations indicating the presence of anhydrous ammonia and prohibiting the entry of unauthorized personnel.

29. The lack of adequate safeguards at entrances to areas containing refrigeration equipment is likely to cause harm because it increases the likelihood that people in and around such areas will be unaware of the hazards and need for safety precautions.

30. Respondent did not provide safeguards at entrances to areas containing refrigeration equipment consistent with industry practice and the standard of care for ammonia refrigeration systems.

31. Another hazard recognized in the anhydrous ammonia industries is when process equipment and piping is not labeled to indicate system information needed to safely perform operation, maintenance, repair, or emergency response activities. One way to address this hazard is to label all ammonia-containing piping to indicate the pipe's contents, direction of flow, physical state (i.e., liquid or vapor), and pressure level (i.e., high or low), and, for other system equipment, such as receivers and accumulators, to install distinctive component markers and labels indicating the installer, the refrigerant, the lubricant, and testing procedures.

32. The absence of properly labeled process equipment and piping is likely to cause harm because it increases the likelihood that individuals performing maintenance, repair, or emergency activities will be unaware of critical system information needed to safely and effectively perform their duties.

33. Respondent did not label process equipment and piping consistent with industry practice and the standard of care for ammonia refrigeration systems.

34. Another hazard recognized in the anhydrous ammonia industries is when ammonia-containing machinery rooms permit refrigerant to escape to other parts of the facility. One way to address this hazard is to design and maintain machinery rooms so that they are sealed off from other areas and refrigerant cannot escape.

35. Permitting refrigerant to escape the machinery room is likely to cause harm because personnel in proximity to the machinery room may be unknowingly exposed to refrigerant.

36. Respondent's machinery room was not designed and maintained to prevent refrigerant from escaping to other parts of the Facility consistent with industry practice and the standard of care for ammonia refrigeration systems.

37. Another hazard recognized in the anhydrous ammonia industries is machinery room doors that are not designed to mitigate the consequences of an accidental release. One way to address this hazard is to design machinery room doors so that they are self-closing, tight-fitting, and outward-opening.

38. Harm is likely to result if a facility does not have machinery room doors designed to mitigate the consequences of an accidental release because it increases the likelihood that ammonia vapors will spread outside the machinery room and because employees will have greater difficulty evacuating during an emergency.

39. Respondent did not have machinery room doors designed to mitigate the consequences of an accidental release consistent with industry practice and the standard of care for ammonia refrigeration systems.

40. Another hazard recognized in the anhydrous ammonia industries is ammonia detection systems that are not actuated to detect ammonia at sufficiently low levels.

41. An ammonia detection system that is not actuated to detect ammonia at sufficiently low levels is likely to cause harm because it will impair a facility's ability to detect an accidental release and to initiate appropriate emergency procedures.

42. During the Inspection, enforcement staff observed that Respondent's ammonia detection system was not actuated at a sufficiently low level consistent with industry practice and the standard of care for ammonia refrigeration systems.

43. Another hazard recognized in the anhydrous ammonia industries is the accumulation of excessive ice on process equipment, pipes, valves, and fittings. One way to address this hazard is to protect equipment subject to ice accumulation by mitigating condensation and frost buildup.

44. Excessive accumulation of ice on process equipment is likely to cause harm because the accumulated ice can interfere with operation, maintenance, and repair activities, and can damage the refrigeration system and associated electrical equipment.

45. Respondent did not maintain the Facility's process equipment, pipes, valves, and fittings to mitigate condensation and frost buildup consistent with industry practice and the standard of care for ammonia refrigeration systems.

46. Another hazard recognized in the anhydrous ammonia industries is the lack of adequate ventilation in ammonia-containing machinery rooms. One way to address this hazard is to install and maintain standard and emergency ventilation systems capable of adequate circulation based on industry metrics and site-specific conditions.

47. The lack of adequate ventilation in machinery rooms is likely to cause harm because it facilitates vapor buildup, which increases the likelihood of significant inhalation, dermal hazards, and fire or explosion.

48. Respondent did not install and maintain ventilation in its machinery room consistent with industry practice and the standard of care for ammonia refrigeration systems.

49. Another hazard recognized in the anhydrous ammonia industries is when a facility's emergency systems are not designed to be operated remotely during a release. This hazard can be addressed by installing remote control equipment immediately outside the machinery room door, or by installing an automatic detection and override system.

50. Not having emergency systems capable of remote operation during a release is likely to cause harm because personnel will be forced to enter areas where dangerous levels of vapors may be present to activate emergency systems.

51. Respondent did not design the Facility's emergency systems to be operated remotely during a release consistent with industry practice and the standard of care for ammonia refrigeration systems.

52. Another hazard recognized in the anhydrous ammonia industries is when a facility does not maintain written procedures for its refrigeration system's operation, maintenance, or repair. One way to address this hazard is to develop, implement, and regularly update procedures for the refrigeration system's operation, maintenance, and repair and to ensure that the procedures are available to all appropriate personnel.

53. Not maintaining procedures for refrigeration system operation, maintenance, or repair is likely to cause harm because such procedures establish the limits of safe operation for process equipment and identify process variables and corrective measures for emergency situations, thereby reducing the likelihood of accidents and mitigating the consequences of accidents that do occur.

54. Respondent did not have written procedures for its refrigeration system's operation, maintenance, and repair consistent with industry practice and the standard of care for ammonia refrigeration systems.

55. Another hazard recognized in the anhydrous ammonia industries is when a facility does not investigate incidents as they occur and, based on such investigations, develop and implement corrective measures to prevent similar incidents in the future. One way to address this hazard is to develop and implement a formal incident investigation program.

56. Harm is likely to result if a facility does not properly investigate incidents because the facility will be less likely to implement corrective measures that prevent similar incidents from reoccurring.

57. Respondent did not investigate incidents at the Facility consistent with industry practice and the standard of care for ammonia refrigeration systems.

58. A hazard recognized in the anhydrous ammonia industries is the malfunction, degradation, or breakdown of equipment due to inadequate preventive maintenance. One way to address this hazard is to implement a preventive maintenance program that identifies equipment inspection and testing protocols and schedules, and provides for the repair or replacement of faulty or damaged equipment.

59. Malfunction, degradation, or breakdown of equipment due to inadequate preventive maintenance is likely to cause harm because it increases the likelihood a release or other accident.

60. Respondent did not have a preventative maintenance program consistent with industry practice and the standard of care for ammonia refrigeration systems.

61. Another hazard recognized in the anhydrous ammonia industries is when vapor barriers on system piping fail due to inadequate maintenance and repair procedures. One way to address this hazard is to require that system piping showing signs of vapor barrier damage is promptly removed and inspected.

62. Vapor barrier failure on system piping is likely to cause harm because uninsulated pipe can deteriorate over time.

63. Respondent did not require that system piping showing signs of vapor damage be promptly removed and inspected consistent with industry practice and the standard of care for ammonia refrigeration systems.

64. Another hazard recognized in the anhydrous ammonia industries is improperly installed or maintained electrical equipment and wiring.

65. Improperly installed or maintained electrical equipment and wiring is likely to cause harm because it is prone to malfunction and failure and because personnel working on and around exposed electrical components are at an increased risk of injury from electric shock.

66. Respondent did not install and maintain the Facility's electrical equipment and wiring consistent with industry practice and the standard of care for ammonia refrigeration systems.

67. Another hazard recognized in the anhydrous ammonia industries is when a facility's buildings and structures are not maintained in a safe and sanitary condition.

68. Not maintaining buildings and structures in a safe and sanitary condition is likely to cause harm because it creates conditions that increase the likelihood of releases and other accidents.

69. Respondent did not maintain the Facility's buildings and structures in a safe and sanitary condition consistent with industry practice and the standard of care for refrigeration systems.

70. Accordingly, EPA alleges that Respondent failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

COUNT III
(Failure to Minimize the Consequences of a Release)

71. Paragraphs 1 through 16, above, are incorporated herein in their entirety by this reference.

72. 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) or an extremely hazardous substance, have a general duty to minimize the consequences of accidental releases that occur.

73. A hazard recognized in the anhydrous ammonia industries is the potential for an ineffective emergency response to an accidental release due to a facility's failure to conduct adequate emergency response planning. One way to address this hazard is to develop a plan thoroughly

analyzing how to mobilize and coordinate an effective emergency response under each of the facility's most likely release scenarios.

74. An inadequate emergency response is likely to cause harm because it will prolong or exacerbate the consequences of an accidental release.

75. Respondent did not conduct emergency response planning consistent with industry practice and the standard of care for ammonia refrigeration systems.

76. Accordingly, EPA alleges that Respondent breached its duty to minimize the consequences of accidental releases in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

D. CIVIL PENALTY

77. EPA proposes that Respondent be assessed, and Respondent agrees to pay a total of **ONE HUNDRED FIFTEEN THOUSAND TWELVE DOLLARS ($115,012)**, as the civil penalty for the violations alleged herein.

78. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

79. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purposes of this proceeding, Respondent: (i) admits the jurisdictional allegations of the complaint; (ii) neither admits nor denies specific factual allegations contained in the CA/FO; (iii) consents to the assessment of any stated civil penalty and to any conditions specified in the consent agreement; (iv) and waives any right to contest the allegations contained in Section C of the CA/FO; and (v) and waives any right to appeal the proposed final order contained in this CA/FO.

80. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

81. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) has been paid, the compliance tasks under Section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

82. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

83. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

84. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. COMPLIANCE TASKS

85. Unless expressly directed otherwise, all submissions required in this section shall be in writing and sent electronically to Donald Nixon at nixon.donald@epa.gov. If EPA requests a submission in hard copy, it shall be sent to:

Donald Nixon
Enforcement Compliance and Assurance Division
U.S. Environmental Protection Agency – Region 9
75 Hawthorne Street
San Francisco, CA 94105

86. If Respondent is unable to complete any of the compliance tasks required in this Section within the associated schedule, Respondent shall submit a written request, including the basis for

the request, for an extension to EPA. Based on this request, EPA may grant an extension to the aforementioned schedule.

87. If a compliance task directs Respondent to certify facts to EPA, Respondent shall submit a written statement containing the following language: "The undersigned hereby certifies under penalty of law, and based on information and belief formed after reasonable inquiry, that the statements and information herein and all supporting documentation are true, accurate, and complete." The certification shall describe the tasks completed, cite to the relevant provisions of this Agreement, and be signed and dated by Respondent's Chief Operating Officer. If the certification is required to include photographs, Respondent shall ensure all photographs are organized and clearly labeled. Any certification submitted other than in compliance with this Agreement shall be ineffective and, if not cured prior to the applicable deadline, may trigger stipulated penalties.

88. Label Piping and Equipment. On or before July 30, 2021, Respondent shall certify to EPA that it has labeled all piping and equipment in the Facility's ammonia system consistent with International Institute of Ammonia Refrigeration ("IIAR"), American Society of Mechanical Engineers ("ASME"), California Mechanical Code ("CMC"), or an equivalent system of labeling; clearly and consistently tagged and labeled all anhydrous ammonia refrigeration system piping, equipment, and valves; and installed a hazard identification sign consistent with National Fire Protection Association ("NFPA") 704 on the high pressure receiver ("HPR") located outside the Facility's engine room. The certification shall be accompanied by photographs clearly showing appropriate labeling and signage on all piping and equipment subject to this Paragraph.

89. Fix Condenser Catwalk and Drift Eliminators. On or before May 31, 2021, Respondent shall certify to EPA that it has installed on the condenser platform a catwalk that facilitates safe

access to valves and the top of condensers for service, maintenance, and inspection; and that it has repaired or replaced damaged drift eliminators on the condenser. The certification shall be accompanied by photographs clearly showing that the improvements required by this Paragraph have been properly completed.

90. Install Overhead Relief Lines. On or before July 30, 2021, Respondent shall certify to EPA that it has implemented all recommendations identified in the Mechanical Integrity Inspection Report ("MI Report") relating to the Facility's relief system, including ensuring the relief header is sound, not obstructed, and running overhead instead of in trough; that Respondent has obtained and documented all relief valve and relief discharge system design information and that such information is complete and available onsite at the Facility.

91. Install Supports for Piping Through Walls and Insulation. On or before August 31, 2021, Respondent shall certify to EPA that all piping supports at the Facility are adequate to prevent piping from resting on wall penetrations; that all insulation continues through wall openings, wall openings are large enough to prevent piping from resting on wood, and pipe supports are adjusted to prevent piping from resting on wall openings. The certification shall be accompanied by photographs clearly showing that the improvements required by this Paragraph have been properly completed.

92. Install Proper Relief Devices for Air Unit Surge Drums. On or before August 31, 2021, Respondent shall certify to EPA that it has verified whether the Facility's Air Unit Surge Drums are ASME rated or field fabricated; if the Air Unit Surge Drums are ASME rated, Respondent shall further certify that it has installed proper relief protection; if the relief protection is field fabricated, Respondent shall further certify that it has either: (a) installed an appropriately sized pressure relief device (i.e., engineering control) and developed procedures to prevent isolation of

surge drums and units while full of liquid (i.e., administrative control); or (b) replaced the field fabricated equipment with appropriate ASME rated vessels and installed an appropriately sized pressure relief valve ("PRV").

93. Label Bunker Coils. On or before July 30, 2021, Respondent shall certify to EPA that it has properly labeled unit and piping in Rooms 15-34 consistent with IIAR Bulletin 114. The certification shall be accompanied by photographs clearly showing appropriate labeling on all piping and equipment subject to this Paragraph.

94. Install Remote E-Stop Shutdown Switches. On or before August 31, 2021, Respondent shall certify to EPA that it has installed remote e-stop shutdown switches on the northeast and northwest corners of the Facility's machinery room. The certification shall be accompanied by photographs clearly showing that the switches have been properly installed in the locations identified.

95. Install Evaporator Impact Guards. On or before August 31, 2021, Respondent shall certify to EPA that it has installed crash guards on all the Facility's evaporators and installed impact protection on all the Facility's air units and piping. The certification shall be accompanied by photographs clearly showing that the improvements required by this Paragraph have been properly completed.

96. Design Capacities. On or before August 31, 2021, Respondent shall certify to EPA that it has performed design calculations for all the Facility's PRVs including the high pressure receiver, and the capacity of the diffusion tank to receive relief valve discharges; the design calculations demonstrate the PRVs and the diffusion tank have appropriate capacities to prevent a catastrophic buildup of ammonia; and that Respondent has developed a safe method to monitor the Facility's diffusion tank operation.

97. Ventilation System Upgrade. On or before August 31, 2021, Respondent shall certify to EPA that it has modified the Facility's machinery room consistent with CMC, IIAR 2, and American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") standards, including ensuring that machinery room doors are tight-fitting, self-closing, and have a panic bar to open the door in the direction of evacuation; that the machinery room walls do not contain holes or gaps for piping or conduit, open windows, or access to other rooms, which may permit refrigerant to escape to other areas; that the ammonia detection alarms in the machinery room are set to 25 ppm; and that all ventilation modifications identified in the MI Report have been properly implemented, including repairing duct work on makeup and exhaust fans, reviewing ventilation capabilities against codes and standards. The certification shall be accompanied by photographs clearly showing that the improvements required by this Paragraph have been properly completed.

98. Repair or Replace Insulation. On or before November 1, 2021, Respondent shall certify to EPA that it has repaired or replaced all broken or missing insulation at the Facility. The certification shall be accompanied by photographs clearly showing that the improvements required by this Paragraph have been properly completed.

H. PAYMENT OF CIVIL PENALTY

99. Respondent consents to the assessment of and agrees to pay civil penalties of a total of **ONE HUNDRED FIFTEEN THOUSAND TWELVE DOLLARS ($115,012)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

100. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, as established in Section L of this CA/FO. Alternatively, Respondent may elect to pay the civil penalty in three (3) equal instalments over one (1) year. The first installment shall be due

within thirty (30) days of the Effective Date, the second installment shall be due within six (6) months of the Effective Date, and the final installment shall be due within one (1) year of the Effective Date. An interest rate of two percent (2%) per annum, assessed monthly, shall be applied to any unpaid amount commencing thirty (30) days after the Effective Date.

101. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091, steffen.craig@epa.gov

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:

Enter SFO 1.1 in the search field
Open form and complete required fields

Respondent shall send a copy of each 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, with a transmittal letter indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Armsey.Steven@epa.gov

and

Donald Nixon
Nixon.Donald@epa.gov

102. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that

will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date. The interest provided for in this Paragraph 110 is in addition to any interest applied pursuant to Paragraph 108.

103. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

104. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS ($500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS ($1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS ($5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

105. 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 EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of the CA/FO.

106. 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. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

107. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

108. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

109. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director, Enforcement and Compliance Assurance Division, EPA Region IX.

J. RESERVATION OF RIGHTS

110. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

111. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state,

or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

112. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

113. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

114. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

115. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

116. Each party to this action shall bear its own costs and attorneys' fees.

117. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

118. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent, Kern Ice and Cold Storage, LLC

DATE: 3-19-21

BY: _____
Name: Mike E Mazzei
Title: COO

United States Environmental Protection Agency, Region 9

DATE: _____

BY: AMY MILLER-BOWEN Digitally signed by AMY MILLER-BOWEN Date: 2021.04.16 09:25:33 -07'00'
Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA-09-2021-0034) be entered and that Respondent pay a civil penalty of ONE HUNDRED FIFTEEN THOUSAND TWELVE DOLLARS ($115,012) and implement the compliance tasks described in Section G in accordance with all terms and conditions of this CA/FO.

STEVEN JAWGIEL Digitally signed by STEVEN JAWGIEL
Date: 2021.05.03 10:25:20 -07'00'

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Kern Ice and Cold Storage, LLC* **(CAA(112r)-09-2021-0034)**, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

VIA E-MAIL:

Respondent:	Michael E. Mazzei Chief Operating Officer Kern Ice & Cold Storage, LLC kispuds@aol.com
Counsel for Respondent:	Andrew K. Sheffield LeBeau Thelen LLP asheffield@lebeauthelen.com
Complainant:	Nicolas R. Cardella Office of Regional Counsel Environmental Protection Agency, Region IX Cardella.Nicolas@epa.gov

STEVEN ARMSEY
Digitally signed by STEVEN ARMSEY
Date: 2021.05.04 19:43:23 -07'00'

Steven Armsey
Regional Hearing Clerk
Environmental Protection Agency, Region IX