UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of Northern Wind, LLC Respondent Proceeding under Section 113 of the Clean Air Act and Section 325(c) of the Emergency Planning and Community Right-to-Know Act	Docket Nos. CAA-01-2024-0010, EPCRA-01-2024-0011 **CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region 1 ("Complainant"), alleges that Northern Wind, LLC ("Respondent") violated the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 - 11050, and the federal regulations promulgated thereunder, and also violated Section 112(r)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1).

Complainant and Respondent (together, the "Parties") agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), set out at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

I. STATUTORY AND REGULATORY AUTHORITY

A. EPCRA Section 312

1. Pursuant to Sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA promulgated Hazardous Chemical Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 370.

2. Pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), owners or operators of facilities that are required to prepare or have available a material data safety sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA"), and regulations promulgated thereunder, must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually, on or before March 1 of each year, and are required to contain information with respect to the preceding calendar year.

3. The term "MSDS" has been replaced by the term "safety data sheet" ("SDS") in OSHA's hazard communication regulations at 29 C.F.R. § 1910.1200.

4. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of reporting under EPCRA Section 312. In accordance with Section 312(b) of EPCRA, 40 C.F.R. § 370.10 establishes minimum threshold levels for hazardous chemicals for the purposes of 40 C.F.R. Part 370. For extremely hazardous substances, the minimum threshold level is (a) 500 lbs. or (b) the

threshold planning quantity set forth in Appendices A and B of 40 C.F.R. Part 355, whichever is lower.

5. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45(a) requires that Tier 1 or Tier 2 forms be submitted annually on or before March 1 and contain information relating to the preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC, or local fire department to request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. The Commonwealth of Massachusetts uses Tier 2 forms rather than Tier 1 forms.

6. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 ("FCPIAA"), and the FCPIAA's implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19, together provide for the assessment of civil administrative penalties, in amounts of up to $67,544 for each violation of Section 312 of EPCRA that occurs after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 312 violation continues constitutes a separate violation.

B. CAA Section 112(r)(1)

7. The purpose of Section 112(r) of the CAA and its implementing regulations is "to prevent the accidental release and to minimize the consequences of any such release" of an "extremely hazardous substance." *See* 42 U.S.C. § 7412(r)(1), 42 U.S.C. § 7412(r)(1).

8. 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 pursuant to 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 29 U.S.C. § 654, to (a) identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause" or the "GDC."

9. Section 112(r)(8) of the CAA, 42 U.S.C. § 7412(r)(8), requires EPA to develop and disseminate information on how to conduct hazard assessments. According to EPA's Guidance for Implementation of the GDC CAA Section 112(r)(1) ("EPA GDC Guidance," May 2000), available at https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf, facilities subject to the General Duty Clause should identify hazards that may result from hazardous releases by determining: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard review.

10. The term "extremely hazardous substance" means an extremely hazardous substance as defined by Section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or

property damage due to its toxicity, reactivity, flammability or corrosivity.[1] The term includes, but is not limited to, regulated substances listed in Section 112(r)(3) of the CAA and in 40 C.F.R. § 68.130.

11. Anhydrous ammonia is included as one of the extremely hazardous substances listed in Section 112(r)(3) of the CAA and in 40 C.F.R. § 68.130.

12. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

14. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), the FCPIAA as amended through 2016, and the FCPIAA's implementing regulations as promulgated and updated by EPA at 40 C.F.R. § 19 (most recently at 88 Fed. Reg. 986, 989 (Jan. 6, 2023)), together authorize the assessment of civil administrative penalties of up to $55,808 per day for violations of CAA Section 112(r) that occurred after November 2, 2015.

II. GENERAL ALLEGATIONS

15. Respondent Northern Wind, LLC operates a cold storage warehouse and distribution center at 75 MacArthur Drive, New Bedford, Massachusetts 02470 (the "Facility").

[1] *See* Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session at 211 (1989).

The business address for Respondent's principal office is 16 Hassey St, New Bedford, Massachusetts 02470.

16. Respondent primarily engages in the processing and wholesale distribution of fresh and frozen seafood products.

17. Anhydrous ammonia is used at the Facility as a refrigerant to maintain appropriate temperatures for the storage of seafood products.

18. Respondent is incorporated under the laws of Massachusetts.

19. Respondent is the "owner or operator" of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

20. At all times relevant to the violations alleged in this Complaint, Respondent was required, pursuant to OSHA and the regulations promulgated thereunder, to prepare or have available onsite an SDS for hazardous chemicals. For extremely hazardous substances listed under 40 C.F.R. Part 355, App. A and B, the threshold level is the lower of (a) 500 pounds or (b) the chemical's Threshold Planning Quantity listed under 40 C.F.R. Part 355, App. A and B.

21. During calendar year 2019, Respondent stored anhydrous ammonia, an extremely hazardous substance, in a quantity that exceeded the minimum threshold level of 500 pounds for EPCRA Tier 2 reporting set forth in 40 C.F.R. § 370.10.

22. Accordingly, the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, apply to Respondent at the Facility.

23. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

25. Respondent is the "owner or operator" of the Facility within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

26. Beginning from no later than 2019, the Facility has stored and utilized anhydrous ammonia in its manufacturing process.

27. Anhydrous ammonia is an "extremely hazardous substance" within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Anhydrous ammonia is flammable and is corrosive to the skin, eyes, and lungs.

28. The unanticipated emission of anhydrous ammonia into the ambient air from the Facility would constitute an "accidental release," as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

29. Accordingly, Respondent has operated a stationary source that stored and utilized anhydrous ammonia, an extremely hazardous substance, and has been subject to the CAA's General Duty Clause at Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

30. On August 4, 2020, an accidental release of anhydrous ammonia occurred at the Facility. Respondent notified the National Response Center ("NRC") about the release the same day and notified EPA the next day. EPA then requested information regarding the release, the Facility's operations, and the amount of anhydrous ammonia being used on site. Respondent provided an initial response to EPA on August 11, 2020.

III. ALLEGED EPCRA AND CAA VIOLATIONS

Count 1: Failure to Timely Submit a Tier 2 Report For Anhydrous Ammonia for Calendar Year 2019

31. During calendar year 2019, Respondent stored anhydrous ammonia, a "hazardous chemical" as defined under 40 C.F.R. § 370.66, at the Facility, in an amount equal to or in excess of the threshold level of 500 pounds as set forth in 40 C.F.R. § 370.10.

32. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit a Tier 2 Form to the SERC, LEPC, and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2019 by March 1, 2020.

33. Respondent failed to submit a Tier 2 form for calendar year 2019 by March 1, 2020.

34. Respondent's failure to timely submit the Tier 2 Form for anhydrous ammonia for calendar year 2019 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

Count 2: Failure to Identify Hazards under the General Duty Clause

35. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

36. To identify hazards that may result from accidental releases of extremely hazardous substances under the General Duty Clause, owners and operators of stationary

sources should determine: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment, using appropriate hazard assessment techniques.

37. Beginning from no later than 2019, Respondent has stored, handled, and used anhydrous ammonia at the Facility.

38. Anhydrous ammonia is an "extremely hazardous substance" within the meaning of the General Duty Clause and is specifically included in a list of extremely hazardous substances in Section 112(r)(3) of the CAA.

39. Pursuant to the General Duty Clause, Respondent was required to identify hazards that may result from accidental releases of anhydrous ammonia by using appropriate, industry-recognized hazard assessment techniques.

40. Prior to the accidental release on August 4, 2020, Respondent had not identified hazards that could result from accidental releases of anhydrous ammonia at the Facility by using appropriate hazard assessment techniques. Respondent subsequently provided EPA with a written process hazard review for anhydrous ammonia in September 2020.

41. Accordingly, Respondent violated the General Duty Clause at Section 112(r)(1) of the CAA.

IV. TERMS OF SETTLEMENT

42. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate its Facility in compliance with Section 312 of EPCRA and the regulations

promulgated thereunder at 40 C.F.R. Part 372, and with the General Duty Clause at Section 112(r)(1) of the CAA.

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

a. Admits that EPA has jurisdiction over the subject matter alleged in this CAFO;

b. Neither admits nor denies the specific factual allegations contained in this CAFO;

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

d. Consents to the issuance of any specified compliance or corrective action order;

e. Consents to the conditions specified in this CAFO;

f. Consents to any stated permit action;

g. Waives any right to contest the alleged violations of law set forth in Section III of this CAFO; and

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

44. For the purpose of this proceeding, Respondent also:

a. Agrees that this CAFO states a claim upon which relief can be granted against Respondent;

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

c. Waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO;

d. Consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Massachusetts; and

e. Waives any rights Respondent may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action.

45. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and taking into account the particular facts and circumstances of this case with reference to relevant statutory penalty criteria and applicable penalty policies, Complainant has determined that it is fair and proper that Respondent pay a total of $72,000 to resolve the violations alleged in Section III of this CAFO.

46. Respondent agrees to:

a. Pay the civil penalty of $72,000 within 30 calendar days of the effective date of this CAFO (*i.e.*, the day the CAFO is filed with the Regional Hearing Clerk);

b. Pay the civil penalty using any appropriate method provided on the website https://www.epa.gov/financial/makepayment, identifying the payment with "*In the Matter of Northern Wind, LLC,* Docket Nos. CAA-01-2024-0010 and EPCRA-01-2024-0011"; and

c. Within 24 hours of payment of the civil penalty, send proof of payment by email to the addresses below. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to

demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "*In the Matter of Northern Wind, LLC,* Docket Nos. CAA-01-2024-0010 and EPCRA-01-2024-0011." The addresses are as follows:

Wanda Santiago
Regional Hearing Clerk
EPA Region 1
santiago.wanda@epa.gov
and
R1_Hearing_Clerk_Filings@epa.gov

and

Kassandra Kometani
Enforcement Counsel
EPA Region 1
kometani.kassandra@epa.gov

47. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

48. If any portion of the civil penalty relating to the alleged EPCRA violation (which shall be deemed to be 17% of the total civil penalty required by Paragraphs 45 and 46 of this CAFO) is not paid when due, then the unpaid portion of the civil penalty shall be payable with accrued interest from the original due date to the date of payment. The interest shall be calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge assessed from the first day that payment is due in accordance with 31 C.F.R. § 901.9(d). In any such

collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

49. If any portion of the civil penalty relating to the alleged CAA violation (which shall be deemed to be 83% of the total civil penalty required by Paragraphs 45 and 46 of this CAFO) is not paid when due, then pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). In the event that the civil penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the civil penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalty and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

50. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any

law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

51. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

52. In accordance with 40 C.F.R. § 22.18(c), this CAFO constitutes a settlement by EPA of all claims for civil penalties for the violations and facts specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

53. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

54. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

55. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following addresses: joseph.farside@lockelord.com and krystle.tadesse@lockelord.com. Respondent understands that these e-mail addresses may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

56. Each Party shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

57. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

58. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

FOR RESPONDENT:

Michael T Fernandes 2/20/24

Mr. Michael Fernandes
President
Northern Wind, LLC

Date

FOR COMPLAINANT:

CAROL TUCKER Digitally signed by CAROL TUCKER
Date: 2024.02.28 11:53:03 -05'00'

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
EPA Region 1

Date

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Northern Wind, LLC is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the CAFO shall become effective on the date that it is filed, either in person or electronically via email, with the Regional Hearing Clerk.

LEANN JENSEN

Digitally signed by LEANN JENSEN
Date: 2024.02.29 08:59:11 -05'00'

LeAnn Jensen
Regional Judicial Officer
EPA Region 1

Date