UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

Cargill, Incorporated 1 Cargill Drive Eddyville, Iowa	CONSENT AGREEMENT AND FINAL ORDER Docket No. CAA-07-2015-0030

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Cargill, Incorporated (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations and facts alleged in this Consent Agreement and Final Order.

II. JURISDICTION

2. This administrative action for the assessment of civil penalties is instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice. Section 113(d) of the CAA, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any

requirement or prohibition of the CAA referenced therein, including Section 112(d) of the CAA, 42 U.S.C. § 7412(d). Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), provides that the EPA Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under Section 113(d) of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to no more than $32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than $37,500 per day for each violation occurring after January 12, 2009.

3. The EPA Administrator and the United States Attorney General, through their delegated representatives, have jointly determined that this administrative penalty action is appropriate for a larger penalty amount or longer period of violation than the time and penalty limitations set forth in Section 113(d) of the CAA.

III. PARTIES

4. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of the EPA, Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

5. Respondent is incorporated under the laws of the state of Delaware and is authorized to do business in Iowa. Respondent's former affiliates CR-1, L.P. and Cargill Nutri-Products, Inc. (Cargill Former Affiliates) no longer exist. The Eddyville, Iowa Vitamin E plant formerly owned and operated by the Cargill Former Affiliates is currently owned and operated by Respondent. Hereinafter, "Cargill" variously refers to Respondent and/or the Cargill Former Affiliates, as appropriate.

IV. STATUTORY AND REGULATORY FRAMEWORK

6. The Clean Air Act establishes a regulatory framework designed to protect and

enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

7. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires EPA to establish emission standards for each category of major sources of hazardous air pollutants (HAPs). Section 112(b) of the Act, 42 U.S.C. § 7412(b), designates methanol, methyl tert butyl ether (MTBE), and formaldehyde as hazardous air pollutants.

8. EPA promulgated the national emissions standards for hazardous air pollutants (NESHAPs) for the pharmaceutical industry. These provisions are codified at 40 C.F.R. Part 63, Subpart GGG (Subpart GGG). Subpart GGG establishes specific standards, test methods and initial compliance requirements for four source categories: Process Vents, Storage Tanks, Equipment Leaks, and Wastewater. See 40 C.F.R. Part 63, Subpart GGG. Additionally, specific monitoring, reporting, and record keeping requirements are associated with the control equipment options selected to comply with the standards.

9. Subpart GGG applies to operations that manufacture a pharmaceutical product, that process, use or produce a HAP, and that are located at a plant site that is a major source. 40 C.F.R. § 63.1250(a).

10. Among other requirements, Subpart GGG sets forth mandatory test methods and compliance procedures, specific monitoring requirements, as well as various reporting and recordkeeping requirements. Additionally, Subpart GGG imposes Equipment Leak Standards, found in 40 C.F.R. § 63.1255, known as LDAR (leak detection and repair) requirements. LDAR requirements generally include identification and monitoring of equipment, repair of leaks, recordkeeping and reporting to ensure that any leaks of air pollutants from equipment used in the manufacturing of organic chemical products are timely detected and repaired.

11. As set forth in 40 C.F.R. § 63.1255, the LDAR requirements apply to, inter alia,

pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, and connectors that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of Subpart GGG.

A. Definitions

12. A "major source" is any stationary source (i.e., any building, structure, facility or installation which emits or may emit any air pollutant) or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit 10 or more tons per year of any HAP or 25 or more tons per year of any combination of HAPs. 42 U.S.C. § 7412(a)(1) & (3).

13. The term "in organic hazardous air pollutant service" means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic hazardous air pollutants. 40 C.F.R. § 63.1251.

B. Factual Allegations

14. At all times pertinent to this action, Cargill was the "owner" and "operator" of a Vitamin E manufacturing facility at 600 Heartland Drive, Eddyville, Iowa (Cargill Vitamin E Facility or Facility) within the meaning of Section 112(a) of the Act, 42 U.S.C. § 7412(a).

15. At all times pertinent to this action, the Cargill Vitamin E Facility was a "stationary source" as that term is defined in Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

16. The Cargill Vitamin E Facility is a "major source" of "hazardous air pollutants" as those terms are defined by Section 112(a) of the Act, 42 U.S.C. § 7412(a).

17. At all times pertinent to this action, Cargill manufactured Vitamin E and associated compounds that are described by standard industrial classification (SIC) Code 2833

and are therefore "pharmaceutical products" as defined by 40 C.F.R. § 63.1251.

18. Cargill processes, uses, or produces the HAPs methanol, methyl tertiary butyl ether and formaldehyde to manufacture Vitamin E and associated compounds at the Cargill Vitamin E Facility, and therefore the Cargill Vitamin E Facility is a "pharmaceutical manufacturing operation" as that term is defined at 40 C.F.R. § 63.1251.

19. Pursuant to 40 C.F.R. § 63.1250(a), the Cargill Vitamin E Facility is an existing affected source because it manufactures Vitamin E and associated compounds falling under SIC code 2833 and because it was constructed before the date of the proposal of Subpart GGG. Cargill is therefore subject to the requirements of 40 C.F.R. Part 63, Subpart GGG.

20. The Cargill Vitamin E Facility was required to comply with the provisions of Subpart GGG no later than October 21, 2002. On August 6, 2002, the Iowa Department of Natural Resources granted Cargill a one year compliance extension for Subpart GGG, from October 21, 2002, to October 21, 2003. Therefore, Cargill was required to comply with Subpart GGG starting on October 21, 2003.

21. Cargill submitted a timely Notice of Compliance Status Report (NOCSR) in February 2004. The NOCSR indicated that Cargill had timely installed a flare to comply with the control requirements of Subpart GGG and commenced an LDAR monitoring program including numerous components, including more than 1150 connectors and valves.

22. EPA conducted an inspection of the Cargill Vitamin E Facility on May 7-9, 2007. Cargill provided requested information to EPA on May 24, 2007.

23. EPA issued a Finding of Violation to Cargill on August 28, 2008. Cargill provided a response to the Finding of Violation on January 30, 2009, and supplemented its response on April 22, 2009.

24. EPA issued a Request for Information to Cargill on January 29, 2010. Cargill

provided a response to the Request for Information on February 26, 2010, and supplemented its response on February 8, 2011.

25. Cargill provided additional information to EPA in response to the Finding of Violation on July 27, 2012.

26. Cargill submitted an updated NOCSR to EPA, dated September 13, 2013, that memorialized its discussions with EPA in relation to the Cargill Vitamin E Facility's Subpart GGG compliance status and EPA's May 2007 inspection, the August 2008 Finding of Violation, and the January 2010 Request for Information.

V. ALLEGED VIOLATIONS OF LAW

27. Subpart GGG requires Cargill to identify wastewater that requires control for each point of determination. 40 C.F.R. § 63.1256(a)(1). A "point of determination" (POD) is the point where a wastewater stream exits the process, storage tank, or last recovery device. 40 C.F.R. § 63.1251. There can be more than 1 POD per process or pharmaceutical manufacturing process unit (PMPU). Cargill failed to identify wastewater that requires control for each POD until January 30, 2009. Therefore, from at least May 9, 2007, until January 2009, Cargill violated the requirements of 40 C.F.R. § 63.1256(a)(1) by failing to identify wastewater that requires control for each POD.

28. To determine whether a wastewater stream is an affected wastewater stream that requires control, 40 C.F.R.§ 63.1256(a)(1)(i) requires Cargill to determine the characteristics of a wastewater stream by determining the annual average concentration and annual load of partially soluble and soluble HAP compounds according to the provisions of 40 C.F.R. § 63.1257(e)(1). Cargill failed to properly calculate the annual average concentration and annual load of partially soluble and soluble HAP compounds for the skim pit POD. Therefore, from at least May 9, 2007, until January 2009, Cargill violated the requirements of 40 C.F.R. § 63.1256(a)(1)(i).

29. When conducting sampling in order to determine whether a wastewater stream is an affected wastewater stream that requires control, GGG requires the owner or operator to prepare a sampling plan that includes, *inter alia*, sampling procedures for minimizing loss of organic compounds during sample collection and sample handling procedures. 40 C.F.R. § 63.1257(b)(10)(vi). In response to EPA's January 2010 Request for Information, Cargill stated that it did not have a sampling plan when it conducted wastewater sampling in 2002 and 2008. Therefore, at least through 2008, Cargill violated the requirements of 40 C.F.R. § 63.1257(b)(10)(vi).

30. Subpart GGG requires Cargill to provide notices for all affected wastewater shipped for off-site treatment that state that the affected wastewater or residual contains organic HAP that are to be treated in accordance with Subpart GGG. 40 C.F.R. § 63.1256(a)(5)(i)(B). In its February 26, 2010, letter to EPA, Cargill provided documentation that its off-site shipments of affected wastewater did not include the notices required by 40 C.F.R. § 63.1256(a)(5)(i)(B). Therefore, from at least May 9, 2007, until February 26, 2010, Cargill violated the requirements of 40 C.F.R. § 63.1256(a)(5)(i)(B).

31. Subpart GGG requires Cargill to prepare a description of maintenance procedures for management of wastewater containing partially soluble or soluble HAP generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair and during periods which are not shutdowns ("Maintenance Wastewater Plan"). 40 C.F.R. § 63.1256(a)(4). Cargill failed to develop a Maintenance Wastewater Plan in compliance with the requirements of Subpart GGG until July 2012. Therefore, from at least May 9, 2007, until July 2012, Cargill violated the requirements of 40 C.F.R. § 63.1256(a)(4).

32. 40 C.F.R. § 63.1254(a) requires Cargill to demonstrate initial compliance with the process vent standards following the procedures described in § 63.1257(d). Subpart GGG, at 40

C.F.R. § 63.1257(d)(2), requires that the owner or operator of an affected source calculate uncontrolled emissions from all equipment in the process. Cargill failed to calculate uncontrolled emissions from some equipment in the process until January 30, 2009. Therefore, from at least May 9, 2007, until January 30, 2009, Cargill violated the requirements of 40 C.F.R. § 63.1254(a).

33. Subpart GGG requires Cargill to keep records of each operating scenario which demonstrates compliance with Subpart GGG. 40 C.F.R. § 63.1259(c). Cargill did not have records of each operating scenario as that term is defined in 40 C.F.R. § 63.1251 until January 30, 2009. Therefore, from at least May 9, 2007, through January 30, 2009, Cargill violated the requirements of 40 C.F.R. § 63.1259(c).

34. During the relevant time period, 40 C.F.R. § 63.1259(a)(3) required Cargill to develop a written Startup, Shutdown, and Malfunction Plan. 40 C.F.R. § 63.1260(i) required Cargill to periodically report implementation of or deviation from the owner or operator's Startup, Shutdown, and Malfunction Plan. Cargill did not submit a startup, shutdown, and malfunction report following certain periods when a startup, shutdown, and malfunction occurred until September 2008. Therefore, from at least May 9, 2007, through September 2008 Cargill has violated the requirements of 40 C.F.R. § 63.1259(a)(3) and 40 C.F.R. § 63.1260(i).

35. Subpart GGG requires Cargill to identify equipment to which 40 C.F.R. § 63.1255 applies such that it can be distinguished readily from equipment that is not subject to 40 C.F.R. § 63.1255. 40 C.F.R. § 63.1255(a)(7). Until September 2008 Cargill had not identified at least 84 connectors and 9 valves operated in organic HAP service 300 hours or more during the calendar year. Therefore, from at least May 9, 2007, through September 2008, Cargill violated the requirements of 40 C.F.R. § 63.1255(a)(7).

36. 40 C.F.R. § 63.1255(e) requires Cargill to monitor all valves in either gas organic

HAP service or in light liquid organic HAP service to detect leaks. 40 C.F.R. § 63.1255(b)(4)(iii) further provides that the requirements of 40 C.F.R. § 63.174 shall apply. 40 C.F.R. § 63.174 requires Cargill to monitor all connectors in gas/vapor service and in light liquid service to detect leaks. Until January 14, 2009, Cargill had not monitored 9 valves that were operated in organic HAP service 300 hours or more during the calendar year. In addition, Cargill had not monitored 84 connectors in gas/vapor service or light liquid service. Therefore, from at least May 9, 2007, through January 14, 2009, Cargill violated the requirements of 40 C.F.R. § 63.1255(e), 40 C.F.R. § 63.1255(b)(4) and 40 C.F.R. § 63.174.

37. Subpart GGG requires Cargill to exclude equipment that is in vacuum service from the equipment leak requirements of 40 C.F.R. § 63.1255. 40 C.F.R. § 63.1255(a)(8). Until February 2010 Cargill included equipment in vacuum service in the equipment leak requirements of 40 C.F.R. § 63.1255. Therefore, from at least May 9, 2007, through February 2010, Cargill violated the requirements of 40 C.F.R. § 63.1255(a)(8).

38. Subpart GGG requires Cargill to comply with 40 C.F.R. § 63.180, which in turn requires that monitoring shall comply with, *inter alia*, Method 21 of 40 C.F.R. Part 60, Appendix A (Method 21). 40 C.F.R. § 63.1255(b). Until January 2009 Cargill had not been monitoring its insulated valves in accordance with the procedures of Method 21. Therefore, from at least May 9, 2007, through January 2009, Cargill violated the requirements of 40 C.F.R. § 63.1255(b) and 40 C.F.R. § 63.180.

VI. CONSENT AGREEMENT

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

a. Admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement and Final Order;

b. Neither admits nor denies the alleged violations of law stated above;

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 Consent Agreement and Final Order;

f. Consents to any stated Permit Action;

g. Waives any right to contest the alleged violations of law set forth in Section V of this Consent Agreement and Final Order; and

h. Waives its rights to appeal the Final Order portion of this Consent Agreement.

40. For the purpose of this proceeding, Respondent:

a. Agrees that this Consent Agreement and Final Order states a claim upon which relief may be granted against Respondent, subject to paragraph 39(b);

b. Acknowledges that this Consent Agreement 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 Consent Agreement and Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

d. Consents to personal jurisdiction in any action to enforce this Consent Agreement and Final Order in the United States District Court; and

e. Waives any rights it 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 Consent Agreement and Final Order, and to seek an

additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

A. Penalty Payment

41. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a compromised civil penalty of One Hundred Ten Thousand Dollars ($110,000) ("EPA Penalty"), as set forth in Paragraph 1 of the Final Order below, and shall perform a Supplemental Environmental Project ("SEP") as set forth in this Consent Agreement and Final Order. The cost of the SEP is One Hundred Fifty-Five Thousand Dollars ($155,000).

42. If Respondent fails to timely pay any portion of the EPA Penalty assessed under this Consent Agreement, including any stipulated penalty assessed pursuant to this Consent Agreement, the EPA may exercise any remedies available to it under 42 U.S.C. § 7413(d)(5) and 40 C.F.R. Part 13.

B. Conditions

43. **Enhanced LDAR Compliance Program**: As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to perform the following at the Cargill Vitamin E Facility:

a. By no later than 90 days after the effective date of this Consent Agreement and Final Order, Cargill shall develop and submit to EPA a document that describes, for its Facility: (i) the LDAR program as it applies to equipment at the Process Units that are subject to LDAR requirements referenced in Subpart GGG (*e.g.*, applicability of regulations to Process Units and/or specific equipment; leak definitions; monitoring frequencies); (ii) a tracking program (e.g. Management of Change) that ensures that new pieces of equipment added to the Process Units for

any reason are, as applicable, integrated into the LDAR program and that pieces of equipment that are taken out of service are, as applicable, removed from the LDAR program; (iii) the roles and responsibilities of all employee and contractor personnel assigned to LDAR functions at the Process Units; and (iv) how the number of personnel dedicated to LDAR functions is sufficient to satisfy the requirements of the LDAR program.

b. By no later than 180 days of the effective date of this Consent Agreement and Final Order, Cargill must complete a third party LDAR audit at the Process Units and submit a LDAR audit report to EPA that details the findings of the third party auditor. The audit shall include: (i) reviewing compliance with all applicable LDAR regulations, including all applicable LDAR requirements related to valves, connectors, pumps, agitators, and open-ended lines; (ii) reviewing and/or verifying the completeness and accuracy of the elements in the LDAR document required by Paragraph 43.a; (iii) reviewing whether any pieces of equipment that are required to be in the LDAR program are not included; and (iv) "comparative monitoring" as described in Paragraph 43.c.

c. Comparative Monitoring. Comparative monitoring conducted during the LDAR audit required by Paragraph 43.b must be undertaken as follows:

    i. Calculating a Comparative Monitoring Audit Leak Percentage. Equipment shall be monitored in order to calculate a leak percentage for the Process Units, broken down by equipment type (i.e., valves, pumps, and agitators). For descriptive purposes under this section, the monitoring that takes place during the audit shall be called "Comparative Monitoring" and the leak

percentages derived from the Comparative Monitoring shall be called the "Comparative Monitoring Audit Leak Percentages."

ii. Calculating the Historic, Average Leak Percentage from Prior Periodic Monitoring Events. The historic, average leak percentage from prior periodic monitoring events, broken down by equipment type (i.e., valves (excluding pressure relief valves), pumps, agitators and connectors) shall be calculated. The following number of complete monitoring periods immediately preceding the Comparative Monitoring shall be used for this purpose: valves- 4 periods; pumps and agitators- 12 periods; and connectors- 2 periods.

iii. Calculating the Comparative Monitoring Leak Ratio. For each type of equipment, the ratio of the Comparative Monitoring Audit Leak Percentage from Subparagraph 43.c.i to the historic, average leak percentage from Subparagraph 43.c.ii shall be calculated. This ratio shall be called the "Comparative Monitoring Leak Ratio." If the denominator in this calculation is "zero," it shall be assumed (for purposes of this calculation but not for any other purpose under this Order or under any applicable laws and regulations) that one leaking piece of equipment was found in the Process Unit through routine monitoring during the applicable period referenced in Subparagraph 43.c.ii.

d. Corrective Action Plan ("CAP").

i. Requirements of a CAP. By no later than the date that is 30 days after the receipt by Cargill of the third-party LDAR audit report, Cargill shall develop and submit to EPA a preliminary CAP if: (i) the results of the

LDAR audit identify any deficiencies; or (ii) a Comparative Monitoring Leak Ratio calculated pursuant to Subparagraph 43.c.iii is 3.0 or higher and the Comparative Monitoring Audit Leak Percentage calculated pursuant to Subparagraph 43.c.i is greater than or equal to 0.5 percent. The preliminary CAP shall describe the actions that Cargill has taken or shall take to address: (i) the deficiencies and/or (ii) the causes of a Comparative Monitoring Leak Ratio that is 3.0 or higher (but only if the Comparative Monitoring Audit Leak Percentage is at or above 0.5 percent). Cargill shall include a schedule by which corrective actions that have not yet been completed will be completed. Cargill shall promptly complete each corrective action item with the goal of completing each action within the date that is 90 days after its receipt of the third-party LDAR audit report. If any action is not completed or not expected to be completed within 90 days after receipt of the third-party LDAR audit report, Cargill shall explain the reasons and propose a schedule for prompt completion in the final CAP to be submitted under Subparagraph 43.d.ii.

ii. Submission of the Final CAP to EPA. By no later than the date that is 120 days after receipt by Cargill of the third-party LDAR audit report, Cargill shall submit the Final CAP to EPA, together with a certification of the completion of each item of corrective action. If any action is not completed within 90 days after Cargill's receipt of the third-party LDAR audit report, Cargill shall explain the reasons, together with a proposed schedule for prompt completion. Cargill shall submit a supplemental

certification of completion to EPA by no later than 30 days after completing all actions.

e. Commencing in the first full calendar quarter after the effective date of this Order, at times that are not announced to the LDAR monitoring technician(s), an LDAR-trained employee or contractor of Cargill, who does not serve on a routine basis as an LDAR monitoring technician at the Facility, shall undertake the following no less than once per calendar quarter for the period of one year in the Process Units:

   i. Verify that equipment was monitored at the appropriate frequency under applicable LDAR regulations;

   ii. Verify that proper documentation and sign-offs have been recorded for all equipment placed on the delay of repair list;

   iii. Ensure that repairs have been performed in the required periods under applicable LDAR regulations;

   iv. Review monitoring data and equipment counts (e.g., number of pieces of equipment monitored per day) for feasibility and unusual trends;

   v. Verify that proper calibration records and monitoring instrument maintenance information are maintained;

   vi. Verify that other LDAR program records are maintained as required; and

   vii. Observe in the field each LDAR monitoring technician who is conducting leak detection monitoring to ensure that monitoring during the quarterly period is being conducted in accordance with Method 21, as required.

Cargill shall promptly correct any deficiencies detected or observed. Cargill shall maintain a log that: (i) records the date and time that the reviews, verifications, and observations required by this Paragraph are undertaken; and (ii) describes the

nature and timing of any corrective actions taken.

f. All documents required to be submitted to EPA by this Order shall contain the following certification, signed by an officer of Cargill:

> 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.

The submissions required by the above paragraphs and subparagraphs shall be made to the following EPA Project Coordinator:

> Joe Terriquez
> U.S. Environmental Protection Agency, Region 7
> AWMD/APCO/ACES
> 11201 Renner Blvd.
> Lenexa, KS 66219
> terriquez.joe@epa.gov

44. Respondent agrees that the time period from the Effective Date of this Consent Agreement and Final Order until all of the conditions specified in Paragraph 43 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section V of this Consent Agreement and Final Order. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

C. Supplemental Environmental Project

45. In settlement of the violations alleged in Section V of this Consent Agreement and Final Order, Respondent shall complete the SEP described in this Consent Agreement and

Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

46. Respondent shall replace mechanical pumps currently in HAP or volatile organic compound (VOC) service at the Facility with pumps that use a sealless or leakless technology ("Sealless Pumps"). This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order and the Sealless Pump SEP Work Plan, attached to this document as Attachment A and incorporated by reference.

47. SEP Completion Report: Within 30 days of completion of the SEP, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 47.d. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 48. The SEP Completion Report shall conform to the requirements of this Consent Agreement and Final Order and Attachment A.

a. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. SEP costs shall not include Cargill's internal expenses such as overhead; internal employee time, salary or overtime; administrative expenses; legal fees; and contractor oversight related to performance of the SEP. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

b. Cargill shall certify the truth and accuracy of each of the following in the SEP Completion Report:

i. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate;

ii. That the SEP is not a project that Cargill was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;

iii. That Cargill has not received and will not receive credit for the SEP in any other enforcement action;

iv. That Cargill will not receive reimbursement for any portion of the SEP from another person or entity;

v. That for federal income tax purposes, Cargill agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and

vi. That Cargill is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP.

c. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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.

d. The SEP Completion Report shall be submitted to:

Joe Terriquez
AWMD/APCO/ACES
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

48. SEP Completion Report Approval: The SEP Completion Report submitted pursuant to this CAFO shall be reviewed in accordance with the procedures outlined in this Paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent, indicating the requirements of this CAFO with which Cargill did not comply. If the SEP Completion Report is disapproved with comments, Respondent shall address EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth in Paragraph 52 below.

49. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

> This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act. 42 U.S.C. § 7401 et. seq.

50. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP described in this Consent Agreement and Final Order by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case, and is not presently negotiating to receive credit for the SEP in any other case.

D. Stipulated Penalties

51. Respondent shall be liable for stipulated penalties to the United States in the amounts set forth below for failure to comply with the requirements of the LDAR Compliance Program. The following stipulated penalties shall accrue per violation per day:

a. For failure to comply with any requirement (excluding submittal of any required report to EPA) of paragraph 43:

Penalty Per Violation Per Day	Period of Noncompliance
$400	1st through 15th day
$800	15th day and beyond

b. For failure to submit any report or documentation as required by paragraph 43:

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 30th day
$500	31st day and beyond

52. For failure to comply with the requirements of the SEP, the following stipulated penalties shall accrue as set forth below:

a. If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this Consent Agreement and Final Order, Respondent shall be liable for and shall pay a stipulated penalty to the United States as follows:

i. For failure to complete the SEP within one year following entry of this Consent Agreement and Final Order:

Penalty Per Day	Period of Noncompliance
$250	1st through 30th day
$500	31st day and beyond

ii. If Cargill spends at least $145,000, but less than $155,000 in SEP Costs (as defined in paragraph 47.a): The difference between $155,000 and the amount of SEP Costs spent by Respondent (Minor Shortfall), plus an amount equal to 10% of the Minor Shortfall.

iii. For failure to spend at least $145,000 in SEP Costs (as defined in paragraph 47.a): The difference between $155,000 and the amount of SEP Costs spent by Respondent (Substantial Shortfall) plus an amount equal to 25% of the Substantial Shortfall.

b. If Respondent fails to timely and completely submit the SEP Completion Report required by this Consent Agreement and Final Order, Respondent shall be liable for and shall pay the following stipulated penalty:

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 30th day
$500	31st day and beyond

53. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP.

54. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Agreement and Final Order.

55. The payment of stipulated penalties under this Consent Agreement and Final Order shall not alter in any way Respondent's obligations to comply with the provisions of this Consent Agreement and Final Order.

56. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 2 of the Final Order portion of this Consent Agreement and Final Order, below.

57. The stipulated penalties provided for in this Consent Agreement and Final Order shall be in addition to any other rights, remedies, or sanctions available to the EPA for Respondent's violation of this Consent Agreement and Final Order or applicable law. Where a violation of this Consent Agreement and Final Order is also a violation of statutory or regulatory requirements, Respondent shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

E. Force Majeure

58. Cargill agrees to perform all requirements under this Consent Agreement and Final Order within the time limits established under this Consent Agreement and Final Order unless the performance is delayed by a force majeure. For the purposes of this Consent Agreement and Final Order, a force majeure is defined as any event arising from causes beyond the control of Cargill, or any entity controlled by Cargill, or Cargill's contractors, which delays or prevents performance of any obligation under this Consent Agreement and Final Order despite Cargill's best efforts to fulfill the obligation. The requirement that Cargill exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the work described in the Consent Agreement and Final Order, increased cost of performance, changes in Cargill's business or economic circumstances, but may include significant delays caused by weather.

59. If an event occurs that may delay the performance of any obligation of this Consent Agreement and Final Order, whether or not caused by a force majeure event, Cargill shall notify EPA in writing within five (5) days of when Cargill knew or should have known that

the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Cargill's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Cargill, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Cargill shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provisions of this paragraph and to undertake best efforts to avoid and minimize delay shall preclude Cargill from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Cargill shall be deemed to know of any circumstance of which Cargill, any entity controlled by Cargill, or Cargill's contractors knew or should have known.

60. If EPA determines the delay in performance or anticipated delay in fulfilling a requirement of this Consent Agreement and Final Order is or was attributable to a force majeure, then the time period for performance of the requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Cargill, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Cargill's obligation to perform or complete other tasks required by this Consent Agreement and Final Order which are not directly affected by the force majeure.

61. If EPA disagrees with Cargill's assertion of a force majeure, then Cargill may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution section of this Consent Agreement and Final Order. In any such proceeding, Cargill shall have the burden of demonstrating by a preponderance of the evidence that the delay

or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted, under the circumstances, that Cargill's best efforts were exercised to avoid and mitigate the effects of the delay, and that Cargill complied with the requirements of this Section. If Cargill satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

F. Dispute Resolution

62. Cargill shall raise any disputes concerning the work described in paragraphs 43 through 50 and any stipulated penalty demands asserted by EPA pursuant to paragraphs 51 through 57 of this Consent Agreement and Final Order to EPA in writing, within fifteen (15) business days after receiving written notice from EPA regarding any aspect of the work required in paragraphs 43 through 50 of this Consent Agreement and Final Order and any stipulated penalty demands asserted by EPA pursuant to paragraphs 51 through 57 of this Consent Agreement and Final Order that Cargill disputes. EPA and Cargill shall expeditiously and informally attempt to resolve any disagreements as follows:

a. EPA and Cargill Project Coordinators shall first confer in an effort to resolve the dispute.

b. If the Project Coordinators are unable to informally resolve the dispute within three (3) business days of the first conference, Cargill shall notify EPA, within five (5) business days, in writing of its objections.

c. Written objections shall identify Cargill's objections, state the basis for those objections, and provide all data, analysis and information relied upon by Cargill.

d. EPA and Cargill then have an additional fourteen (14) business days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the fourteen (14) business days, Cargill may request in writing, within five (5)

business days, a determination resolving the dispute by EPA Region 7's Regional Judicial Officer ("RJO").

e. The request should provide all information that Respondent believes is relevant to the dispute. EPA may also submit to the RJO all information that the EPA believes is relevant to the dispute. If Cargill's request is submitted within five (5) business days, the RJO shall issue a determination in writing which will be EPA's final decision.

f. EPA's final decision shall be incorporated into and become an enforceable part of this Consent Agreement and Final Order and shall no longer be subject to dispute pursuant to this Consent Agreement and Final Order. Cargill shall proceed in accordance with the RJO's decision regarding the matter in dispute, regardless of whether Cargill agrees with the decision.

g. If Cargill does not perform the work described in paragraphs 43 through 50 of this Consent Agreement and Final Order in accordance with EPA's decision, EPA reserves the right in its sole discretion to seek enforcement of this Consent Agreement and Final Order, seek stipulated penalties, and/or any other appropriate relief.

63. If EPA and Cargill reach agreement on the dispute at any time, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this Consent Agreement and Final Order.

64. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to paragraphs 43 through 50 and paragraphs 51 through 57 of this Consent Agreement and Final Order during the pendency of the dispute resolution process except as agreed by EPA in writing.

The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Consent Agreement and Final Order.

G. Additional Conditions

65. The provisions of this Agreement shall apply to and be binding upon Respondent and its agents, successors, and assigns. From the Effective Date of this Agreement until Termination of this Consent Agreement and Final Order, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

66. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement and Final Order. By signing this Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information.

67. By signing this Consent Agreement and Final Order, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and Final Order and has the legal capacity to bind the party he or she represents to it.

68. By signing this Consent Agreement and Final Order, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 72) during the time period between the issuance of this Consent Agreement and Final Order and the deadline (stated in Paragraph 43) for Respondent to complete the non-penalty conditions of this Consent Agreement constitutes sufficient consideration for Respondent's obligation to completely perform the non-penalty conditions of this Consent Agreement as stated in Paragraph 43, regardless of whether the covenant not to sue subsequently terminates.

69. By signing this Consent Agreement and Final Order, Respondent certifies that to the best of its knowledge and belief, the information it has supplied concerning this matter was at the time of submission believed to be true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

70. Except as qualified by Paragraph 42, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

H. Effect of Consent Agreement and Final Order

71. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

72. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition

stated in Paragraph 43 (including payment of any stipulated penalties owed). If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraph 43 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraph 43.

73. Penalties paid pursuant to this Consent Agreement and Final Order shall not be deductible for purposes of federal taxes.

74. This Consent Agreement and Final Order constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

75. The terms, conditions, and compliance requirements of this Consent Agreement and Final Order may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

76. Any violation of this Consent Agreement and Final Order may result in a civil judicial action for an injunction or civil penalties of up to $37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action.

77. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations in a manner consistent with this Consent Agreement and Final Order, nor shall it

be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

78. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

79. This Consent Agreement and Final Order shall automatically terminate upon the latest date of the following events: (a) payment by Respondent of the EPA Penalty described in paragraph 41; (b) completion by Respondent of the Enhanced LDAR Compliance Program described in paragraph 43; (c) approval by Complainant of the SEP Completion Report described in paragraphs 47 and 48; and (d) payment by Respondent of all stipulated penalties in accordance with paragraph 56. The provisions of paragraphs 70 through 78 survive termination of this Consent Agreement and Final Order.

VII. FINAL ORDER

Pursuant to the authority of Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Respondent shall pay a civil penalty of One Hundred Ten Thousand Dollars ($110,000) within thirty days of the effective date of this Final Order.

2. Payment of the penalty may be submitted on-line at *www.pay.gov* by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of each payment receipt and mail a copy of each receipt to EPA's representative identified in this paragraph:

Regional Hearing Clerk
Enforcement Coordination Office
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

and to

Joe Terriquez
AWMD/ACES
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219.

Payments may also be made by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, Missouri 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA's representatives identified in this paragraph.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest and penalties.

B. Parties Bound

4. Respondent shall comply with all terms of the Consent Agreement and Final Order. The terms of this Consent Agreement and Final Order shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall take steps to ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9-8-15
Date

Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

9/8/15
Date

Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT:
CARGILL, INCORPORATED,

8/31/2015
Date

Signature

James V. Fritz
Printed Name

AVP, Director of Engineering
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

9-9-15
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

ATTACHMENT A

Cargill/Eddyville, Iowa Vitamin E Facility: Sealless Pump Supplemental Environmental Project Work Plan

Cargill will implement a Sealless Pump supplemental environmental project ("Sealless Pump SEP") designed to reduce potential fugitive emissions of hazardous air pollutants ("HAPs") and volatile organic compounds ("VOCs") from its Eddyville, Iowa Vitamin E facility ("Facility"). Cargill's Facility utilizes mechanical seal pumps ("Mechanical Pumps") in a number of locations, including locations utilizing MTBE, methanol and/or formaldehyde ("In HAP Service") and locations utilizing ethanol ("In VOC Service"). The Sealless Pump SEP is an equipment replacement project and will consist of the following:

1. Cargill will replace a number of the Mechanical Pumps currently in operation at the Facility with pumps that use a sealless or leakless technology ("Sealless Pumps").

2. The Mechanical Pumps Cargill will replace may consist of both pumps In HAP Service and pumps In VOC Service. At least sixty percent (60%) of the pumps that will be replaced will be In HAP Service.

3. Cargill will spend at least $155,000 to implement the Sealless Pump SEP.

4. Cargill will complete its Sealless Pump SEP no later than one year following entry of the Consent Agreement and Final Order ("CAFO").

5. Cargill will submit a SEP completion report for the Sealless Pump SEP to USEPA within 30 days of completing the SEP. The report will include the following information:

    a. A detailed description of the SEP as completed;

    b. A description of any problems encountered in implementing the SEP and actions taken to address the problems;

    c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or proof of payment (for external resources) and/or accounting documentation (for internal resources) that specifically identify and itemize the individual costs or value of the goods and services; and

    d. A certification that Cargill has completed in the SEP in compliance with the CAFO.

IN THE MATTER OF Cargill, Incorporated, Respondent
Docket No. CAA-07-2015-0030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

meyer.johathan@epa.gov

Copy by email to Attorney for Respondent:

svharris@sidley.com

Kathy Robinson
Hearing Clerk, Region 7