

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



In the Matter of)
)
Red Star Yeast Company, LLC) **Docket No. RCRA-07-2023-0151**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Red Star Yeast Company, LLC (“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 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).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Sections 3005 of RCRA, 42 U.S.C 6925 and the standards for identification and listing of hazardous waste (40 C.F.R. Part 261 and 262.11), and the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Red Star Yeast Company, LLC a foreign limited liability company authorized to operate under the laws of Iowa.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Section 3008(a) the Solid Waste and Disposal Act to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Parts 262 and 270.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “treatment” as any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amendable for recovery, amendable for storage, or reduced in volume.

13. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

14. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

15. “Solid waste” is defined at 40 C.F.R § 261.2.

16. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

17. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

18. The regulation at 40 C.F.R. § 260.10 defines “small quantity generator” as a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

19. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

20. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

21. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at

40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$117,468 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

22. Respondent is a limited liability company and authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

23. Respondent owns and operates a facility located at 950 60th SW, Cedar Rapids, Iowa (“facility”). Respondent produces compressed and liquid yeast for baking and industrial ethanol production. It also manufactures nutritional yeast to which selenium has been added. Major raw materials used by the facility include yeast culture, growth medium (corn syrup, ammonia, water, and molasses), and selenium additive. Respondent employs approximately 155 people at the facility.

24. On or about December 13, 2005, Respondent provided its initial RCRA generator notification. At that time, the facility notified as a Small Quantity Generator. Since 2005, the facility has notified EPA that it was operating as a Small Quantity Generator or Large Quantity Generator. The facility has been operating as a Large Quantity Generator since April 2019, and obtained the following RCRA ID number: IAR000505669.

25. On or about January 23, 2023, the Region 7 EPA inspectors conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste.

26. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous waste(s) as defined at 40 C.F.R. § 261.2 and 261.3:

- a. 10,000-gallon Hazardous Waste Tank 22 containing selenium contaminated sludge. Selenium contaminated sludge is a D010 listed hazardous waste.

27. At the time of the inspection, the following waste accumulation tanks were present:

- a. Two, 10,000-gallon hazardous waste accumulation tanks.

Violations

28. Complainant hereby states and alleges that Respondent has violated RCRA, and the federal regulations promulgated thereunder, as follows:

Count 1 Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

29. Complainant hereby incorporates the allegations contained in Paragraphs 22 through 28 above, as if fully set forth herein.

30. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

31. At the time of the inspection, the Respondent did not have a permit or interim status.

32. The regulations at 40 C.F.R. § 262.17(a), states that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without interim status, and without complying with the requirements of parts 124, 264 through 267, and 270, or the notification requirements of sections 3010 of RCRA provided all the conditions for exemption set forth at 40 C.F.R. § 262.17 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at their facility for any length of time. Respondent failed to comply with the following conditions.

Storage of hazardous waste for more than 90 days

33. A Large Quantity Generator may accumulate hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in § 262.17(b) through (e). At the time of the inspection, the Respondent did not have a permit or interim status.

34. At the time of the inspection, The EPA inspector determined that 10,000-gallon Hazardous Waste Storage Tank 22 was RCRA emptied on September 29, 2022 (116 days prior to the compliance inspection).

35. The EPA inspector determined the facility had stored hazardous waste beyond 90 days without a RCRA permit required by RCRA. The facility emptied and completed shipments of hazardous wastes contained in Tank 22 on February 3, 2023. Therefore, hazardous waste was stored in Tank 22 an additional 36 days past 90 days.

36. By the storing hazardous waste on-site for greater than 90 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265, and the permit requirements of 40 C.F.R. Part 270.

37. Respondent's accumulation of hazardous waste beyond the 90-day large quantity generator storage limit without a permit is a violation of Section 3005 of RCRA, 42 U.S.C. 6925.

Failure to keep a satellite container closed when not adding or venting

38. Complainant hereby incorporates the allegations contained in Paragraphs 29 through 37 above, as if fully set forth herein.

39. The regulation at 40 C.F.R. § 262.15(a)(4) require a container holding hazardous waste to be closed at all times during accumulation, except: (i) when adding, removing or consolidating waste; or (ii) when temporary venting of a container is necessary.

40. At the time of the inspection, EPA observed an aerosol can puncturing unit that was operating as a satellite accumulation container. The satellite accumulation container was not closed.

41. The Respondent's failure to keep a satellite container closed when not adding or venting, is a violation of 40 C.F.R. § 262.15(a)(4).

Failure to properly label two hazardous waste storage tanks with an indication of the nature of the hazard

42. The regulation at 40 C.F.R. § 262.17(a)(5)(ii)(B) requires a large quantity generator accumulating hazardous waste in tanks to mark or label its tanks with the indication of the hazard's contents.

43. At the time of the inspection, EPA observed two, 10,000-gallon hazardous waste accumulation tanks that were labeled with the words "hazardous waste," but were not labeled with the indication of the nature of the hazard.

44. The Respondent's failure to label two hazardous waste storage tanks with an indication of the nature of the hazard, is a violation of 40 C.F.R. § 262.17(a)(5)(ii)(B).

Failure to inspect a hazardous waste container accumulation area on a weekly basis

45. The regulation at 40 C.F.R. § 262.262.17(a)(1)(v) requires a large quantity generator to inspect, on at least a weekly basis, central accumulation areas.

46. At the time of the inspection, the EPA noted a missed inspection during the week of October 5, 2020.

47. The Respondent's failure to inspect during the week of October 5, 2020, is a violation of 40 C.F.R. § 262.17(a)(1)(v).

Failure to mark one hazardous waste accumulation container with an accumulation start date

48. The regulation at 40 C.F.R. § 262.17(a)(5)(i)(C) requires a large quantity generator accumulating hazardous waste in tanks to mark or label its tanks with the date upon which each period of accumulation begins clearly visible for inspection on each container.

49. At the time of the inspection, EPA observed a one-liter hazardous waste accumulation container in the HWCAA without an accumulation start date.

50. The Respondent's failure to mark the hazardous waste accumulation container with an accumulation start date, is a violation of 40 C.F.R. § 262.17(a)(5)(i)(C).

CONSENT AGREEMENT

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

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and

h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

52. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein, performance of the compliance actions described below, and to completion of the Supplemental Environmental Project (SEP) described below.

53. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

54. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

55. Respondent to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *seaton@keatingandlyden.com* and *c.kaltenbach@lesaffre.com*.

Penalty Payment

56. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Seven Thousand Seven Hundred and Five Dollars (\$37,705), as set forth below, and shall perform SEP as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is Thirty-Five Thousand Eight Hundred and Sixty-Four Dollars (\$35,864). The SEP is further described below.

57. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

58. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Anna Landis, Attorney
landis.anna@epa.gov

60. Respondent understands that their failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

61. In response to the violations of RCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, 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.

62. Respondent shall complete the following SEP: Respondent will acquire and purchase emergency response equipment for the Cedar Rapids Fire Department (CRFD) and the Linn County Hazmat Team (LCHT). Both the CRFD and the LCHT are local emergency response entities located in Iowa. Both entities respond to hazardous waste incidents, including potential spills from the containers or tanks identified as part of the EPA's January 2023 inspection. Both entities prepared a list of equipment that would aid in their response to hazardous waste or other chemical incidents, including potential spills or releases. The Respondent provided a SEP proposal letter with a table detailing the equipment requests, quantity, unit cost, and total cost dated August 17, 2023, and an updated table providing an updated equipment and cost list, dated August 25, 2023. (See Attachment A). The SEP shall cost at least Thirty-Five Thousand Eight Hundred and Sixty-Four Dollars and Sixteen Cents (\$35,864.16). Respondent agrees that the SEP shall be completed within 60 days (2) months of the Effective Date of this Consent Agreement and Final Order.

63. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

64. Within 90 days (3) months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 69 below. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 70 below. The SEP Completion Report shall contain the following information:

- a. Detailed description of the SEP as implemented. Including but not limited to the following itemized costs:
 - i. Invoices or receipts documenting the equipment purchased;
- b. Description of any problems encountered in implementation of the projects and the solution thereto;
- c. Description of the specific environmental and/or public health benefits (from SEP policy: to the extent feasible, quantify the benefits associated with the project and provide a report setting forth how the benefits were measures or estimated) resulting from implementation of the SEP; and
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

67. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. 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.

68. 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.

69. The SEP Completion Report shall be submitted on or before the due date specified above to:

Kevin Snowden
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
snowden.kevin@epa.gov

70. SEP Completion Report Approval: The SEP Completion Report 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. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate 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 below.

71. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order 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 to enforce federal laws.

72. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$35,864.16;
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- (g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph b.
- (h) As indicated in an email sent to EPA by Respondent's legal counsel on August 25, 2023, Respondent has inquired of the SEP recipient and/or SEP implementer, i.e., the CRFD and the LCHT, whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the CRFD and the LCHT that neither is a party to such a transaction.

73. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of 100 percent of the amount by which the settlement penalty was mitigated on account of the SEP, minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.

- iii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
 - iv. For failure to submit any other report required by Paragraph 66 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the reasonable discretion of EPA.
 - (c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
 - (d) 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 of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 60 herein.
 - (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
 - (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

74. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

75. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

76. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

77. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

78. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Seventy Thousand Seven Hundred Fifty-Two Dollars (\$70,752) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

79. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

80. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

81. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

82. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

83. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

84. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

85. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall 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.

86. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

87. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. Environmental Protection Agency

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Anna Landis
Office of Regional Counsel

Date

RESPONDENT:

Red Star Yeast Company, LLC
950 60th Avenue SW
Cedar Rapids, Iowa 52404



Signature

October, 12, 2023

Date

MATHIEU CAGNARY

Printed Name

PLANT MANAGER

Title

FINAL ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borrromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(For EPA use only.)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Red Star Yeast Co., EPA Docket No. RCRA-07-2023-0151, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Anna Landis
Office of Regional Counsel
landis.anna@epa.gov

Kevin Snowden
Enforcement and Compliance Assurance Division
snowden.kevin@epa.gov

Milady Peters
Office of Regional Counsel
Peters.milady@epa.gov

Copy via Email to Respondent and Counsel for Respondent:

Chris Kaltenbach General Counsel
Red Star Yeast Company, LLC
950 60th Avenue SW
Cedar Rapids, Iowa 52404
c.kaltenbach@lesaffre.com

Seaton Thedinger
Keating & Lyden, LLC
5377 Manhattan Circle, Suite 203
Boulder, Colorado 80303
seaton@keatingandlyden.com

Copy via Email to the State of Iowa:

Ed Tormey, Acting Administrator (e-copy)
Environmental Services Division
Iowa Department of Natural Resources
Ed.tormey@dnr.iowa.gov

Mike Sullivan, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources
Michael.sullivan@dnr.iowa.gov

Dated this _____ day of _____, 2023.

Signed

Attachment A

1. Respondent's SEP proposal letter and Table (CRFD)
2. Respondent's SEP amended Table (LCHT)