

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**



<b>IN THE MATTER OF:</b>	)	<b>Docket No. CAA (112r)-09-2023-0073</b>
	)	
Del Mar Food Products Corp	)	
1720 West Beach Road	)	
Watsonville, California	)	
	)	
	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
	)	<b>40 C.F.R. §§ 22.13 and 22.18</b>
<u>Respondent.</u>	)	

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is Del Mar Food Products Corp. (“Respondent”).

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

**B. GENERAL ALLEGATIONS**

3. Respondent owns and operates a facility located at 1720 West Beach Road, Watsonville, California (“Facility”). The Facility is a frozen fruit and vegetable production facility.

4. On September 27, 2021, EPA performed an inspection of the Facility to evaluate Respondent's implementation of and compliance with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304–12 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a) (“Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.

5. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and its implementing regulations, owners and operators of stationary sources producing, processing, handling or storing a chemical in 40 C.F.R. Part 68, or any other extremely hazardous substance, have a general duty to identify hazards which may result from releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

6. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

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

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

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

10. In a letter dated November 3, 2020, the United States Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

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

12. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

13. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

14. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Tables 1 and 2.

15. Ammonia (anhydrous) (hereinafter “ammonia”) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds pursuant to 40 C.F.R., § 68.130 Table 1.

16. At all times relevant to this CA/FO, Respondent used or stored 10,000 pounds or more of ammonia in System E.

17. System E is subject to the Program 3 requirements provided in 40 C.F.R §§ 68.65 to 68.87.

**C. VIOLATIONS**

**COUNT I**

**Process Safety Information – Ventilation System Design**

18. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

19. 40 C.F.R. § 68.65(d) requires owners or operators to compile written process safety information pertaining to equipment in the process, including information related to ventilation system design.

20. Respondent provided insufficient Low-Pressure Receiver (LRP1-OP) vessel and PRV equipment documentation for System E.

21. Respondent’s failure to provide adequate process safety information constitutes a violation of 40 C.F.R. § 68.65(d).

**COUNT II**

**PSI and Mechanical Integrity – Ammonia Alarms and Sensors**

22. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. Process Safety Information. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
24. Respondent set the alarm threshold concentration in System E above the industry standard of 25 ppm of ammonia.
25. Respondent only had one ammonia sensor action in the System E machinery room, as opposed to the industry standard of two.
26. Respondent installed audible alarms outside, rather than inside, the System E ammonia machinery room (“AMR”).
27. Respondent failed to install audible or visual alarms inside the System E AMR.
28. Mechanical Integrity. 40 C.F.R. § 68.73(e) requires the owner or operator to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.
29. The System E ammonia detector calibration form (dated November 17, 2020) indicated that the alarm set point was 50 ppm and there was no audible alarm. Inspectors noted the 50-ppm set point and lack of audible alarm during the inspection. As a result, a leak that occurred on September 27, 2021, resulted in ammonia levels in the AMR reaching 40 ppm and did not activate an alarm.
30. Respondent failed to promptly correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner, in violation of 40 C.F.R. § 68.73(e).

**COUNT III**

**Process Safety Information – Machine Room Ventilation**

31. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

32. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with RAGAGEP.

33. System E AMR walls included unsealed penetrations for electrical conduit and piping.

34. American National Standards Institute (ANSI)/International Institute of Ammonia Refrigeration (IIR) 9-2020, Section 7.3.6.2 requires that pipes penetrating the machinery room envelope be sealed to walls, ceilings, or floors through which they pass to prevent leakage of ammonia vapor to adjoining spaces and to maintain the fire rating of the machinery room envelope.

35. The inspection team observed that the air intakes into the System E AMR were blocked by a tool cabinet containing paints and chemicals, hoses, maintenance equipment, and an emergency spill kit.

36. ANSI/ASHRAE 15-2010, Section 8.3 requires that a clear and unobstructed approach and space be provided for inspection, service, and emergency shutdown of condensing units, compressor units, condensers, stop valves, and other serviceable components of refrigerating machinery.

37. Respondent's failure to document that equipment complies with RAGAGEP constitutes a violation of 40 C.F.R. § 68.65(d)(2).

**COUNT IV**

**Process Safety Information – Labelling**

38. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

39. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with RAGAGEP.

40. The National Fire Protection Association (“NFPA”) diamond on the primary entry door to the System E AMR was labeled 3, 1, 0. The NFPA diamond should have been labeled 3, 3, 0. ANSI/IIAR 9-2020 Section 7.2.9.1 (1) states buildings and facilities with refrigeration systems shall be provided with placards in accordance with NFPA 704.

41. The ammonia piping associated with the System E condensers, to and from the diffusion tank, and plate freezers was not adequately labeled, and there was no labeling on the piping leading to and from the diffusion tank.

42. ANSI/IIAR 9-2020, Section 7.2.9.4 requires that ammonia piping mains, headers, and branches be identified with the following information: 1) “AMMONIA;” 2) physical state of the ammonia; 3) relative pressure level of ammonia, being low or high as applicable; 4) Pipe service, which shall be permitted to be abbreviated; and 5) direction of flow.

43. Respondent’s failure to document that equipment complies with RAGAGEP constitutes a violation of 40 C.F.R. § 68.65(d)(2).

#### **COUNT V**

#### **Process Hazard Analysis -- Failure to Address Recommendation**

44. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.67(e) requires that the owner or operator shall establish a system to, among other things, promptly address the Process Hazard Analysis (“PHA”) revalidation team's findings and recommendations, assure that the recommendations are resolved and documented in a timely manner, and to complete actions as soon as possible.

46. Respondent failed to timely address 2016 and 2021 recommendations related to the vapor detection system and emergency control. The inspection team detailed that a PHA recommendation from 2016 (to tie each vapor detection system into an emergency control system that would shut down the mechanical equipment if the set point were exceeded) was scheduled for completion by July 1, 2017. The same recommendation was again made in the 2021 PHA. The 2021 PHA gave this recommendation a high-risk ranking.

47. Respondent's failure to timely resolve the PHA team's recommendation constitutes a violation of 40 C.F.R. § 68.67(e).

#### **COUNT VI**

##### **Operating Procedures - Failure to Conduct Annual Review and Certification**

48. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

49. 40 C.F.R. § 68.69(c) requires owners or operators to certify annually that operating procedures for each covered process are current and accurate.

50. Respondent failed to conduct an annual review and certification of its operating procedures for 2020.

51. Respondent's failure to recertify its operating procedures constitutes a violation 40 C.F.R. § 68.69(c).

#### **COUNT VII**

##### **Incomplete Training Documentation**

52. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

53. 40 C.F.R. § 68.71(c) requires the owner or operator to ascertain that each employee involved in operating a process has received and understood the training and prepare a record

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which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

54. Respondent failed to document that understanding of training was complete.

55. Respondent's failure to document training constitutes a violation of 40 C.F.R. § 68.71(c).

**COUNT VIII**  
**Mechanical Integrity**

56. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

57. 40 C.F.R. § 68.73(d)(1) requires that inspection and tests shall be performed on process equipment; (2) inspection and testing procedures shall follow RAGAGEP; and (3) the frequency of inspections and tests of process equipment shall be consistent with applicable manufactures recommendations and good engineering practices and more frequently if determined to be necessary by prior operating experience.

58. Inspectors observed that System E's Low-Pressure Receiver 2 and the oil pot below Low-Pressure Receiver 1 had corrosion. Respondent's 2021 PHA What If/Checklist Question 3.05 indicated that "preventative maintenance mechanical integrity inspections per IIAR 6 (non-destructive testing)" should be performed. As of September 2021, no metal thickness testing had been performed to determine if corrosion had caused metal thinning.

59. 40 C.F.R. § 68.73(e) requires that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

60. Inspectors noted that the vapor barrier and insulation was damaged on piping associated with the System E's Low Pressure Receiver 1 and ammonia chiller. The pinhole leak on September 24, 2021, indicated that the piping was corroded and damaged.

61. Respondent's failure to conduct testing and its failure to promptly correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner constitute a violation of 40 C.F.R. §§ 68.73(d) and (e).

**COUNT IX**  
**Compliance Audits - 2018 Late Recommendations**

62. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

63. 40 C.F.R. § 68.79(d) requires that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

64. Respondent did not promptly correct deficiencies identified in the 2018 Compliance Audit. The 2021 audit indicated that updates to the 2018 Compliance Audit action table did not occur until 2021.

65. Respondent's failure to correct deficiencies constitutes a violation of 40 C.F.R. § 68.79(d).

**COUNT X**  
**Incident Investigation - Failure to Report Near Miss**

66. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

67. 40 C.F.R. § 68.81(a) requires that the owner or operator shall investigate each incident which resulted in or could reasonably have resulted in a catastrophic release of a regulated substance.

68. Inspectors documented that due to the presence of released anhydrous ammonia in the System E machinery room, a near miss on the day of the inspection, and eleven nuisance odor logs in the last five years, Respondent had not demonstrated adequate documentation of near misses.

69. Respondent's failure to investigate incidents that resulted in, or could reasonably have resulted in a catastrophic release, in violation of 40 C.F.R. § 68.81(a).

### **COUNT XI**

#### **Contractors - Failure to Audit Contractor Work**

70. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

71. 40 C.F.R. § 68.87(b)(5) requires that the owner or operator shall periodically evaluate the performance of the contract owner or operating in fulfilling their obligations.

72. Inspectors observed that oversight and quality assurance of contractor work through auditing/periodic evaluation was not being undertaken by Respondent, contrary to Respondent's own contractor policy, Section 19.3.4 of "23-a Contractor Written Procedures."

73. Respondent's failure to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations constitutes a violation of 40 C.F.R. § 68.87(b)(5).

### **COUNT XII**

#### **General Duty Clause - Failure to Design a Safe Facility**

74. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

75. The CAA Section 112(r)(1) states that "owners and operators of stationary sources producing, processing, handling or storing [a substance listed in 40 C.F.R. Part 68 or any other extremely hazardous substance] have a general duty [...] to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe

facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.” 42 U.S.C. § 7412(r)(1).

76. Inspectors observed that the System A AMR had open windows in the upper portion of the AMR wall above the high pressure receiver to provide intake air above the machinery in the AMR, which subjects intake air to machine exhaust.

77. Inspectors observed that there were not two separate ammonia sensors in the System C engine room.

78. Inspectors observed that there were no audible and visual ammonia leak detection alarms outside the System A AMR.

79. Inspectors observed that the System A AMR exhaust ventilation discharged onto an employee parking area rather than vertically upwards, creating a hazard.

80. Inspectors observed that the king valve on top of the System A high pressure receiver did not have a handwheel to allow for operation during an emergency.

81. Respondent’s failure to design a safe facility constitutes a violation of the General Duty Clause of the CAA, 42 U.S.C. 7412(r)(1).

**COUNT XIII**

**General Duty Clause - Failure to Maintain a Safe Facility**

82. Paragraphs 1 through 17 and 75, above, are incorporated herein by this reference as if they were set forth here in their entirety.

83. Inspectors observed missing pressure relief valve design information for System A overprotection of LPR-2, LPR-3, IC-1 through 3, and F-1 through 4.

84. Inspectors observed that the ammonia detectors in the System A and C AMRs were set to alarm at 100 ppm.

85. Inspectors observed that piping used to remove oil from Oil Pot 04 below Low-Pressure Receiver 3 in System A did not have a shutoff valve prior to the self-closing valve.

86. Inspectors observed that Respondent failed to replace PRVs on pressure vessels throughout the Facility every five years.

87. Inspectors observed that System A had fourteen sets (two each) of PRVs installed in June 2014. System A has nine additional PRVs with unknown installation dates. These PRVs were not replaced until November 2021 at the earliest.

88. In 2019, System B PRVs were replaced with unused valves manufactured in 2013. The contractor failed to indicate that the valves had been installed in 2019.

89. Inspectors observed that the System B AMR electrical panel did not have arc flash warning signage.

90. Inspectors observed that ammonia piping was not adequately labeled to indicate contents, direction of flow, and physical state throughout the Facility.

91. Inspectors observed that vapor barrier and insulation were missing or damaged, and ice had built up on pressure vessels and piping in numerous locations throughout the Facility.

92. Inspectors observed surface corrosion and pitting on ammonia containing pressure vessels, piping and equipment in numerous locations throughout the Facility.

93. The System A AMR was constructed of tin and wood and was not fire-rated.

94. Respondent's failure to maintain a safe facility constitutes a violation of the General Duty Clause of the CAA, 42 U.S.C. 7412(r)(1).

**D. CIVIL PENALTY**

95. EPA proposes that Respondent be assessed, and Respondent agrees to pay **ONE HUNDRED THIRTY-ONE THOUSAND FOUR HUNDRED TWENTY DOLLARS (\$131,420)**, as the civil penalty for the violations alleged herein.

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

**E. ADMISSIONS AND WAIVER OF RIGHTS**

97. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section G of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

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

99. This settlement shall only resolve Respondent’s liability for federal civil penalties for the violations and facts alleged in this CA/FO.

100. This CA/FO will not be construed to create rights in, or grant any cause of action to, any third party not party to this CA/FO.

**F. PARTIES BOUND**

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

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

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

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

**G. PAYMENT OF CIVIL PENALTY**

105. Respondent consents to the assessment of and agrees to pay civil administrative penalties of **ONE HUNDRED THIRTY-ONE THOUSAND FOUR HUNDRED TWENTY DOLLARS (\$131,420)**, in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

106. Within ninety (90) days of the Effective Date, Respondent shall pay the assessed penalty according to the terms of this CA/FO.

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

Regular Mail:

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

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson (314-418-4087)

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW



In the Matter of Del Mar Food Products Corp.  
Docket Number CAA § 112(r)-09-2023-0073  
Consent Agreement and Final Order

Washington, DC 20074  
Contact - Jesse White (301-887-6548)  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 31006  
CTX Format

Online Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter "sfol.l" in the search field  
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
[r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov)

And

Bridget Johnson  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 9  
Hawthorne Street  
San Francisco, CA 94105  
[Johnson.Bridget@epa.gov](mailto:Johnson.Bridget@epa.gov)

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

will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

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

**H. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

110. If Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

111. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Nothing shall prevent the simultaneous accrual of separate penalties for separate violations of this CA/FO.

112. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of the CA/FO.

113. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

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

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

**I. RESERVATION OF RIGHTS**

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

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

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

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

**J. MISCELLANEOUS**

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

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

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

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

**M. NOTICE**

124. Unless otherwise specified herein, any notifications, submissions, or communications required by this CA/FO, shall be made in writing and addressed as follows:

To EPA:

Bridget Johnson  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 9  
Johnson.Bridget@epa.gov

With a copy to:

Matthew K. Trawick  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region 9  
Trawick.Matthew@epa.gov

To Respondent:

Frank Mecozzi  
Del Mar Food Products Corp.  
frank@delmarfoods.com

125. With regard to notices under Section H (Stipulated Penalties), any party may, by written notice to the other parties, change its designated notice recipient or notice address provided above.

126. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this CA/FO or by mutual agreement of the parties in writing.

**L. EFFECTIVE DATE**

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

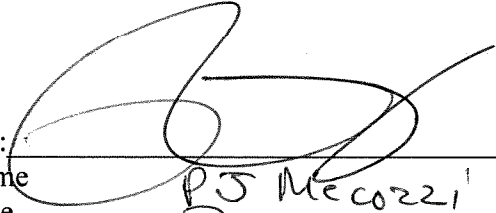
In the Matter of Del Mar Food Products Corp.  
Docket Number CAA § 112(r)-09-2023-0073  
Consent Agreement and Final Order

IT IS SO AGREED.

Respondent Del Mar Food Products Corp.

DATE: 8.22.23

BY: \_\_\_\_\_  
Name  
Title

  
P.J. Meccozzi  
Pres.

Complainant United States Environmental Protection Agency, Region IX

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

Amy C. Miller-Bowen  
Director, Enforcement and Compliance Assurance  
Division

AMY MILLER-  
BOWEN  
Digitally signed by AMY  
MILLER-BOWEN  
Date: 2023.09.01  
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