

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

** FILED **
30SEP2019 - 08:44AM
U.S.EPA - Region 09

IN THE MATTER OF:

Growers Ice Company
1060 Growers Street
Salinas, California

Respondent.

Docket No.

CAA(112r)-09-2019- 0079

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. § 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A) and (d), 42 U.S.C. § 7413(d), Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
3. Respondent is Growers Ice Company ("Respondent").
4. The Administrator of the EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA and EPCRA, Delegation 7-6-A, dated August 4, 1994 (CAA); Delegation 22-3-A, dated July 20, 2016 (EPCRA). The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance

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Division. Regional Delegation R9-7-6-A, dated February 11, 2013 (CAA); Regional Delegation R9-22-3-A, dated February 11, 2013 (EPCRA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7); and Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.
6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates a fresh produce storage and distribution facility comprised of approximately 35 acres that includes cold room facilities and ice making equipment, located at and adjacent to 1060 Growers Street in Salinas, California (the "Facility"). An ammonia refrigeration system is used to cool fresh produce while in storage and for shipment at the Facility.
8. On September 13, 2017, EPA performed inspections of the Facility pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and Section 304-312 of EPCRA, 42 U.S.C. §§ 11004-12. Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA and EPCRA.

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9. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. See 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
10. 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. § 7062(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
11. 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). The Facility is also a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
12. At all times referred to herein, Respondent was the “owner or operator” of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

CAA Section 112(r)

13. 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 source in order to protect human health and the environment.
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 has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C.

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§ 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

15. Ammonia (anhydrous) 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. 40 C.F.R. § 68.130, Table 1.
16. At all times relevant to this CA/FO, Respondent had, and has, 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

EPCRA Section 312

17. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility which is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form (“inventory form”) containing information on hazardous chemicals present at the facility during the preceding calendar year above threshold levels established in 40 C.F.R. § 370.20(b). This inventory must be submitted by March 1 of each year to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility. 40 C.F.R. § 370.25.
18. Ammonia is an “extremely hazardous chemical” as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. § § 11021(e) and 11022(c), with a threshold planning quantity of 500 pounds. 40 C.F.R. Part 355, App. A & B.

C. ALLEGED VIOLATIONS

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19. Based on foregoing, EPA alleges that Respondent has violated Section 112(r)(7) of the CAA, Section 312 of EPCRA, and the codified rules of 40 C.F.R. Part 68, governing the CAA's Chemical Accident Prevention Provisions, as follows:

COUNT I

(Failure to submit annual chemical inventory forms)

20. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
21. Respondent did not list the hazardous chemical anhydrous ammonia among the hazardous materials inventory for the Facility in 2016, although the Facility maintains approximately 140,000 pounds of anhydrous ammonia on-site.
22. By failing to report the required inventory information on hazardous chemicals at the Facility above threshold amounts, Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.45(a).

COUNT II

(Failure to comply with process safety requirements)

23. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
24. 40 C.F.R. § 68.65(d)(2)-(3) require that owners or operators document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP") and, for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, requires that the owner or operator determine and document that the equipment is designed, maintained, and operating in a safe manner. EPA generally determines RAGAGEP with reference to

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standards published by established industry organizations and manufactures' requirements and recommendations.

25. Based on EPA's inspection, EPA determined that the west machine room door did not display signage restricting access to authorized personnel, the door was not self-closing or tight sealing, was without a panic hardware, and was missing a National Fire Protection Association (NFPA) placard to alert those entering of the dangers of ammonia.
26. By these conditions, Respondent failed to meet industry standards consistent with American National Standards Institute/International Institute of Ammonia Refrigeration (ANSI/IIAR) 2-2014, Sections 6.3.4, and American Society of Heating, Air-conditioning Engineers (ANSI/ASHRAE) 15-2013, Section 8.11.8, which states that access to a machinery room shall be restricted to authorized personnel and that doors shall be clearly marked, or permanent signs shall be posted at each entrance to indicate this restriction. ANSI/IIAR Section 6.10.2 and ANSI/ASHRAE Section 8.11.2 also state that machinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall also be equipped with panic hardware and shall be side hinged to swing outward to facilitate egress of personnel from the machinery room in an emergency.
27. In addition, ANSI/IIAR 2-2014, Section 6.15.3 states each machinery room entrance door shall be marked with a permanent sign to indicate that only authorized personnel are permitted to enter the room. NFPA 1-2012, Section 53.3.4.1 states that refrigeration units or systems shall be provided with approved hazard identification signs in accordance with NFPA 704, Standard System for the identification of Hazardous Emergency Response and ANSI/IIAR 2-2014, Section 6.15.1 states that the building and facilities with

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refrigeration systems shall be provided with placards in accordance with NFPA 704 and the Mechanical Code.

28. By failing to restrict access to the west machine room, not having a self-closing and tight sealing door with panic hardware, and failing to mark entry with appropriate signage and NFPA placard, the Respondent failed to meet recognized and generally accepted good engineering practices, in violation 40 C.F.R. § 68.65(d)(2).

COUNT III

(failure to comply with process safety requirements)

29. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
30. 40 C.F.R. § 68.65(d)(2) require that owners or operators document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
31. Based on the inspection, EPA determined that portions of ammonia piping in multiple locations at the Facility did not include appropriate labels; valves in multiple locations did not contain identification tags; a pressure vessel in a machine room did not include a label; emergency stop switches were not labeled properly; and two high pressure receivers did not include an NPFA placard.
32. ANSI/IIAR 2-2014, Sections 5.14.5, IIAR Bulletin 109, Section 4.7.6, IIAR Bulletin 114, Sections 4.1.1 through 4.1.8 and ANSI/American Society of Mechanical Engineers (ASME) 13.1-2007 specify requirements for the labelling and other identification of ammonia refrigeration system piping and other components. These requirements state that ammonia piping, mains, headers, and branches shall be identified with the contents

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(“AMMONIA”), include the physical state of the ammonia, the pressure level of ammonia being low or high, pipe service, and direction of flow. ANSI/ASHRAE 15, Section 11.2.2 states that systems containing more than 110 pounds of refrigerant shall be provided with durable signs having letters not less than 0.5 inch in height designating valves or switches for controlling the refrigerant flow. ANSI/IIAR 2, Section 5.14.2 and IIAR Bulletin 114 Section 4.2 (2014) state that refrigeration machinery shall be provided with labels, and component markers will bear the name of the equipment they identify (e.g., RECEIVER, ACCUMULATOR, RECIRCULATOR, etc.). NFPA 1-2012, Section 53.2.3.4.5 and ANSI/IIAR 2-2014, Section 6.12.2 state that a clearly identified switch of the break-glass type shall be located outside and adjacent to the designated principal machinery room door and have an approved tamper-resistant cover and provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed, automatic refrigerant valves located in the machinery room. NFPA 1-2012, Section 53.2.4.1 and ANSI/IIAR 2-2014, Section 6.15.1 require facilities with refrigeration systems be provided with placards accordance with NFPA 704 and the Mechanical Code, which describe the details of the placards.

33. Based on EPA’s inspection, equipment at the Facility was inadequately labeled. By these conditions the Respondent failed to meet RAGAGEP in violation of 40 C.F.R. § 68.65(d)(2).

COUNT IV

(failure to comply with process safety requirements)

34. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

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35. 40 C.F.R. § 68.65(d)(2) require that owners or operators document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
36. ANSI/IIAR 2-2014, Section 17.6 states that ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices.
37. ANSI/IIAR 2-2014, Section 6.6.2 state that pipes penetrating the machinery room separation shall be sealed to the walls, ceiling, or floor through which they pass
38. Based on EPA’s inspection, EPA determined that ammonia detection alarms did not contain alarm signage, and pipe penetrations in and through the machine rooms were not tight fitting. By failing to comply with RAGAGEP, Respondent violated 40 C.F.R. § 68.65(d)(2).

COUNT V

(failure to comply with process safety requirements)

39. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
40. 40 C.F.R. § 68.65(d)(2) require that owners or operators document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
41. ANSI/IIAR 2-2014, Section 13.4.2 states that refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact.
ANSI/IIAR 2-2014, Section 7.2.4 states that equipment shall be protected where a risk of physical damage exists.

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42. Based on EPA's inspection, EPA determined ammonia piping was not securely fastened to supports in multiple locations, and some suspended evaporators were observed to not be protected from potential physical damage. By failing to comply with RAGAGEP, Respondent violated 40 C.F.R. § 68.65(d)(2).

COUNT VI

(failure to comply with process safety requirements)

43. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
44. 40 C.F.R. § 68.65(d)(2) require that owners or operators document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). ANSI/IIAR 2-2014, Section 15.5.1.5 states that the termination of a PRV discharge shall be directed upward and arranged to avoid spraying ammonia on personnel in the event of a discharge.
45. Based on EPA's inspection, EPA determined that a pressure relief valve (PRV) was positioned to discharge horizontally rather than upward. By failing to comply with RAGAGEP, Respondent violated 40 C.F.R. § 68.65(d)(2).

COUNT VII

(failure to comply with operating procedures)

46. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
47. 40 C.F.R. § 68.69 requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities

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involved in each covered process, consistent with the process safety information, and addressing certain elements including safety systems and their functions.

48. 40 C.F.R. § 68.69(c) requires that owners or operators review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources, and further, certify annually that these operating procedures are current and accurate.
49. Based on EPA's inspection, EPA determined that Respondent did not review and certify operating procedures for 2017. By failing to comply with operating procedure requirements, Respondent violated 40 C.F.R. § 68.69(c).

COUNT VIII

(failure to comply with mechanical integrity requirements)

50. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
51. 40 C.F.R. § 68.73 requires that owners and operators perform inspections and tests on process equipment and 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.
52. Based on EPA's inspection, EPA determined that pressure vessel SA-13 was in poor condition but in service, although a 2015 mechanical integrity audit had identified the poor condition of vessel SA-13. EPA observed that the vapor barrier and insulation on SA-13 were also in poor condition, and that significant surface corrosion existed on the level column and external piping entering SA-13.

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53. By failing to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner, Respondent violated 40 C.F.R. § 68.73(e).

COUNT IX

(failure to comply with mechanical integrity requirements)

54. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
55. 40 C.F.R. § 68.73 requires that owners and operators perform inspections and test on process equipment.
56. 40 C.F.R. § 68.73(e) specifies that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits before further use or in a safe a timely manner when necessary means are taken to assure safe operation.
57. During the inspection, EPA found damaged insulation barrier and damaged insulation in four locations. This damage included (1) a split insulation barrier and exposed insulation in the east AMR; (2) split and deteriorating or missing insulation vapor barrier at the condenser stand at 1140 Meeks Street; (3) removed or split vapor barrier on the exterior of ammonia piping at 1080/1100 cold storage warehouse above the loading dock exposing insulation to the elements and potential pipe corrosion; (4) removed vapor barrier covering low-pressure receiver on mobile refrigeration unit L9, exposing the insulation beneath to the elements; and (5) non-insulated piping that was blistered and had chipped paint in some locations, and other piping and piping supports showing signs of corrosion. EPA also observed open electrical conduit with exposed wiring in numerous locations, including a corroded and unprotected electrical outlet adjacent to the ammonia condenser.

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58. NFPA 1-2012, Section 53.3.1.1 states that refrigeration systems shall be operated and maintained in a safe and operable condition, free from accumulations of oil, dirt, waste, excessive corrosion, other debris, or leaks, and in accordance with ASHRAE 15 and the mechanical code. ANSI/IIAR 2-2014, Section 5.10.1 states piping and equipment surfaces not intended for heat exchange shall be insulated, treated or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in areas where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system.
59. IIAR Bulletin 109, Section 4.7.4 states that uninsulated refrigeration piping should be examined for signs of corrosion, and if corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventative paint and badly corroded pipe should be replaced, and Section 4.7.5 requires insulated piping showing signs of vapor barrier failure should have the insulation removed and the piping inspected. IIAR Bulletin 110, Section 6.4.4.3 requires all wet insulation be removed and the affected surface of the pressure vessel examined. The pressure vessel surface should be appropriately treated with rust preventative coating before re-insulating. In addition, Section 6.4.4.3 states that where insulation is unsound or damaged, the insulation shall be removed and the underlying pressure vessel or shell-and-tube heat exchanger be inspected.
60. NFPA 70 2014, Section 110.12(B) states that, for electrical components, there be no damaged parts that adversely affect safe operation or mechanical strength of the equipment, such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating. Based on the inspection, EPA determined that Respondent had not

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corrected a significant number of deficiencies that were outside the acceptable limits. By failing to comply with mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73(e).

COUNT X

(failure to comply with management of change requirements)

61. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
62. 40 C.F.R. § 68.75 requires that owners and operators establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process.
63. 40 C.F.R. § 68.75(c) specifies that employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, prior to start-up of the process or affected part of the process.
64. EPA found that documentation for installation of a new water chiller indicated the standard operating practice to retrain personnel following installation, but the management of change was not signed to indicate training had been performed.
65. By these conditions, Respondents failed to ensure that employees involved in operating process and maintenance, and any contract employees whose job tasks will be affected by a change in the process, are informed of, and trained in, any change prior to start-up of the process or affected part of the process.
66. By failing to properly document retraining of personnel following installation of new water chiller, Respondent violated 40 C.F.R. § 68.75(c).

COUNT XI

(failure to conduct compliance audit requirements)

67. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.
68. 40 C.F.R. § 68.79 requires owners or operators to certify that they have evaluated compliance with the provisions for each covered process, at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.
69. 40 C.F.R. § 68.79(d) specifies 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.
70. Based on EPA's inspection, EPA found that Respondent had not promptly determined and documented that all deficiencies identified during the 2015 compliance audit had been corrected. The 2015 compliance audit found that operating procedures were not being certified annually and general site entrance control was not adequate. EPA identified these same items in their 2017 inspection of the Facility.
71. By failing to promptly correct certain deficiencies identified during the 2015 compliance audit, Respondent violated 40 C.F.R § 68.79(d).

D. CIVIL PENALTY

72. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **THIRTY THOUSAND DOLLARS (\$30,000.00)**, as the civil penalty for the violations alleged herein.

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73. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68,” dated June 2012, and the “Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right to Know Act, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

74. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA’s jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA’s jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
75. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to the contest of the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

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

F. PARTIES ARE BOUND

77. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) has been paid, the supplemental environmental project ("SEP") has been completed, and any delays in performance and/or stipulated penalties have been resolved.
78. 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.
79. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
80. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent.

G. PAYMENT OF CIVIL PENALTY

81. Respondent consents to the assessment of and agrees to pay civil penalties of **THIRTY THOUSAND DOLLARS (\$30,000.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the alleged violations of Sections 112(r) of the CAA, 42 U.S.C. § 7412(r), Section 312 of EPCRA, 42 U.S.C. § 11022, and related regulations, as alleged in Section C above.

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82. Respondent shall pay the civil penalty within sixty (60) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is 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.
83. All payments shall indicate the name of the Facility, the EPA identification number for the Facility, the Respondent's name and address, and the EPA docket number of this action, as set forth reflected on this CA/FO. 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

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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

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.pav.gov

Enter "sfol.I" 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

And

Donald Nixon

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency – Region 9

75 Hawthorne Street

San Francisco, CA 94105.

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84. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in the 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 will be assessed month will be applied on any principal amount not paid within ninety (90) days of the due date.
85. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

H. SUPPLEMENTAL ENVIRONMENTAL PROJECT

86. As a condition of settlement, Respondent shall perform the SEP specified in this Section. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements. The SEP includes the following upgrades:
- (1) Liquid Recirculator Pump: Install two Cornell CB Pumps. The canned motor pumps shall employ a structure in which the pump and motor are integrated, and the liquid transported is sealed inside.
 - (2) Control system: Install a new control system with liquid valve automation that controls the existing liquid solenoid valves, including the King Valve piping and allows for remote shut off of the valves to the system.
87. The SEP upgrades will have the following environmental, health and safety benefits: (1) Reduce potential leaks of hazardous material at the valve seals on the Liquid Recirculator

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Pump; (2) reduce maintenance relating to seal replacement; and (3) enable remote shut off of valves, as well as closer monitoring and notification of potential releases. The upgrades specified in this SEP are not required by 40 C.F.R. Part 68 or currently reflected in RAGAGEP references.

88. Respondent shall expend at least **ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000)** to complete the SEP described herein.
89. Respondent shall complete the SEP within twelve (12) months of the Effective Date of this CA/FO. Within ninety (90) days of completion of the tasks outlined in Paragraph 86, above, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (1) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts, and correspondence with its contractor; (2) a brief narrative description of the environmental and public health and safety benefits resulting from implementation of the SEP; and (3) certification that the projects have been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.
90. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "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

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true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The Final SEP Completion Report shall be submitted via hard copy or electronic mail to:

Don Nixon
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Email: Nixon.donald@epa.gov

91. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section I below.
92. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) That all cost information provided to EPA in connection with 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 at least ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000); (2) that, as of the date of this CA/FO, 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; (3) 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 CA/FO; (4) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (5) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (6) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in

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performing the SEP; and (7) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this CA/FO.

93. Any public statement, oral or written, in print, film, or other media, if any, made by Respondent that references the SEP under this CA/FO, occurring on or after the date of Respondent's execution of this CA/FO, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

94. In the event 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 the thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
95. In the event that Respondent fails to substantially conduct the SEP in accordance with this CA/FO, Respondent shall pay a stipulated penalty of ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000.00) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 89.
96. If Respondent demonstrates that the SEP tasks described in Section H were completed but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Section H, Respondent shall pay a stipulated penalty to the United States that is the

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difference between ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000.00) and the actual costs incurred by Respondent towards completion of the tasks described in Section H.

97. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant 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 this CA/FO. 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. Complainant 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, its implementing regulations, and EPCRA. 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. 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.

J. RESERVATION OF RIGHTS

98. Except as addressed in this CA/FO, EPA hereby reserves all 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 statutory and regulatory powers, authorities, rights and remedies, both

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legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory or common law enforcement authority of the United States.

99. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue relating to any federal, tribal, state or local permit.
100. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

101. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
102. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
103. Each party to this action shall bear its own costs and attorney's fees.
104. Respondent consents to entry of this CA/FO without further notice.

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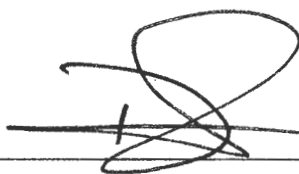
L. EFFECTIVE DATE

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

IT IS SO AGREED:

Respondent Growers Ice Company

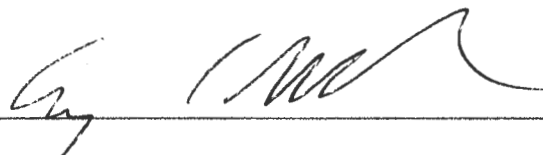
DATE: 8.6.19

BY: 

Russell Gheen
General Manager

Complainant United States Environmental Protection Agency, Region IX

DATE: 7/26/19

BY: 

Amy Miller
Director of Enforcement and Compliance Assurance
Division

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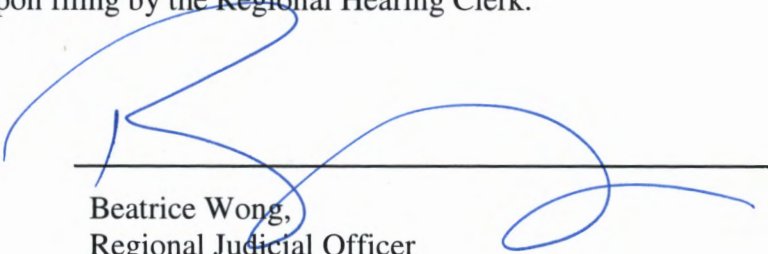
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA(2008)-09-2019-00 79) be entered and that Respondent pay a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000), due within sixty (60) days from the Effective Date of this Consent Agreement and Final Order, and implement the Supplemental Environmental Project described in Section I of this CA/FO, in accordance with all terms and conditions of this Consent Agreement and Final Order.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

Sept. 27, 2019

Date


Beatrice Wong,
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Growers Ice Company* (CAA(112r)-09-2019-0079), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Mr. Russel Gheen
General Manager
Growers Ice Company
1060 Growers Street
Salinas, California 93901

HAND DELIVERED:

Complainant - Emily Griffith, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, California 94105

Date: 9/30/19



FOR: Steven Armsey
Regional Hearing Clerk
EPA, Region 9