

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX



IN THE MATTER OF:)	Docket No.
)	CAA (112r)-09-2025-0016
Wawona Frozen Foods)	
2202 S. Cedar Ave.)	CONSENT AGREEMENT AND FINAL
Fresno, CA 93725)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A), (d), 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.
2. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator of EPA is authorized to sign consent agreements memorializing settlements of enforcement actions against persons who violate CAA Section 112(r), 42 U.S.C. § 7412(r). The Administrator delegated this authority to the EPA Regional Administrators by Delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region IX redelegated this authority to the Director of the Enforcement Division (now the Enforcement and Compliance Assurance Division or "ECAD") by Delegation R9-7-6-A, dated February 11, 2013.

3. The United States Department of Justice granted EPA a waiver from the conditions on administrative actions specified in CAA Section 113(d), 42 U.S.C. § 7413(d), to allow EPA to pursue this administrative action.
4. Complainant is the Director of ECAD.
5. Respondent is Wawona Frozen Foods ("Respondent"), a California corporation licensed to conduct business in California whose principal office is located at 100 W. Alluvial Avenue, Clovis, California.
6. EPA and Respondent have agreed to a settlement of this action before the filing of a complaint.
7. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the CAA.
8. This Consent Agreement and Final Order ("CA/FO"), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3), (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) - (3).
9. 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.

B. GENERAL ALLEGATIONS

10. At all times relevant to this CA/FO, Respondent is a corporation and therefore a "person" as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

11. At all times relevant to this CA/FO, Respondent operated a facility (the "Facility") located at 2202 S. Cedar Avenue, Fresno, California, that utilizes anhydrous ammonia for cold storage and freezing of peaches, nectarines, plums, and strawberries.
12. On December 19-20, 2018, EPA performed an inspection of the Facility to evaluate compliance with the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 103, 42 U.S.C. § 9603, the Emergency Planning and Community Right-to-Know Act ("EPCRA") Sections 304-312, 42 U.S.C. §§ 11004-12, and CAA Section 112(r), 42 U.S.C. § 7412(r) (the "Inspection"). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.
13. On May 26, 2023, Respondent reported an incident at the Facility involving two refrigeration employees which resulted in an anhydrous ammonia release of 0.57 pounds.
14. Pursuant to CAA Section 112(r)(7), 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 release of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
15. CAA Sections 111(a)(3) and 112(a)(3), 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant."
16. CAA Section 302(g), 42 U.S.C. § 7602(g), defines "air pollutant" as "any air pollution

agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”

17. Ammonia (anhydrous) is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Tables 1 and 2.

18. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).

19. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.

20. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.

21. At all times relevant to this CA/FO, the real property and improvements thereto located at the Facility are a “stationary source” as defined by CAA Sections 111(a)(3) and 112(a)(3), 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

22. At all times relevant to this CA/FO, Respondent produced, used, or stored more than 10,000 pounds of ammonia (anhydrous) at the Facility.

23. At all times relevant to this CA/FO, Respondent was subject to Program 3 requirements because there are public receptors within the distance to the endpoint for the worst-case release from its Facility and was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.

C. ALLEGED VIOLATIONS

Count 1

(Failure to Comply with Offsite Consequence Analysis and Process Safety Information Requirements)

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

25. Under 40 C.F.R. § 68.25(a), the owner or operator of a facility shall analyze and report in its RMP a worst-case release scenario.

26. Under 40 C.F.R. § 68.25(h), the owner or operator of a facility may consider passive mitigation systems in its analysis of a worst-case release scenario provided that the mitigation system is capable of withstanding the release event triggering the worst-case scenario and would still function as intended.

27. Based upon the Inspection and subsequent investigation, EPA determined that Respondent relied on a passive mitigation system (i.e. the building) but failed to demonstrate in its worst-case release scenario that a release would be passively mitigated by the building despite relying on passive mitigation in its hazard assessment.

28. Under 40 C.F.R. § 68.65(d)(2), the owner or operator of a facility must document that equipment complies with recognized and generally accepted good engineering practices

("RAGAGEP").

29. Based upon the Inspection and subsequent investigation, EPA determined that the Facility did not document that the equipment complies with RAGAGEP. Specifically:

- a. Although section 8.11.2 of American National Standards Institute ("ANSI")/American Society of Heating, Refrigerating and Air Conditioning Engineers ("ASHRAE") provides that, "[e]ach refrigerating machinery room shall have a tightfitting door or doors opening outward, self-closing if they open into the building and adequate in number to ensure freedom for persons to escape in an emergency . . . there shall be no openings that will permit passage of escaping refrigerant to other parts of the building," the barn door stayed open during the duration of the Inspection, and did not appear to be tight-fitting;
- b. Although section 13.3.2.6 of International Institute of All-Natural Refrigeration 2-2021 states, "[s]hut-off valves connecting ammonia-containing equipment or piping to atmosphere shall be capped, plugged, blanked, or locked closed during operating, service, or standby conditions when they are not in use," there were open-ended pipes lacking plugs or caps in the engine room and the blast freezer;
- c. Although American Society of Mechanical Engineers A13.1-15 section 3.1 states that "[p]ositive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated form. Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both

directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard,” the Facility piping lacked adequate and consistent labeling; and

- d. Although ANSI/ASHRAE 15-2013, section 11.6 provides “[r]efrigerating systems shall be maintained by the user in a clean condition, free from accumulations of oily dirt, waste, and other debris, and shall be kept accessible at all times,” the ammonia machinery room did not have functional, tested ventilation.

30. For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, under 40 C.F.R. § 68.65(d)(3), the owner or operator must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

31. Based on evidence gathered during the investigation, EPA determined that the Facility did not document that the equipment that did not comply with the RAGAGEP described above were designed, maintained, inspected, tested, and operating in a safe manner.

32. Accordingly, EPA alleges that by failing to analyze and report in its RMP that a release in a worst-case release scenario would be passively mitigated by the building despite relying on passive mitigation, and by failing to comply with RAGAGEP or document that its existing equipment was safe, Respondent violated the offsite consequence analysis and process safety information requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.25(h), 68.65(d)(2) and 68.65(d)(3).

Count 2

(Failure to Ensure Mechanical Integrity)

33. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

34. Under 40 C.F.R. § 68.73(b), the owner or operator of a facility must establish and implement written procedures to maintain the on-going integrity of process equipment.

35. Based on evidence gathered during the investigation, EPA determined that Respondent did not have individualized checklist sheets for specific equipment/vessels. The inspection checklist only contained one task box to verify all nine pieces of equipment/vessels.

36. Under 40 C.F.R. § 68.73(e), the owner or operator of a facility must 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.

37. Based on evidence gathered during the investigation, EPA determined that there were mechanical integrity deficiencies that are outside acceptable limits for several pieces of equipment. Specifically, EPA observed heavy ice buildup on compressors, recirculators, oil pots, pipes, and valves and observed rusty and corroded ammonia piping above the air purger.

38. Accordingly, EPA alleges that by failing to establish and implement written procedures to maintain the on-going integrity of process equipment, and by failing to correct deficiencies with 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, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.73(b) and (e).

Count 3

(Failure to Conduct Refresher Training)

39. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

40. Under 40 C.F.R. § 68.71(a)(1), the owner or operator of a facility must train employees involved in operating a covered process in an overview of the process and in the appropriate operating procedures. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. Under 40 C.F.R. § 68.71(b), the owner or operator must provide refresher training to each employee involved in operating a covered process at least every three years to assure that the employee understands and adheres to the current operating procedures of the process. Under 40 C.F.R. § 68.71(c), the owner or operator must document the identity of the employee provided the required training, the date of training, and the means used to verify that the employee understood the training.

41. Based on evidence gathered during the investigation, EPA determined that Respondent failed to conduct annual fit testing training to ensure that respirators at the facility fit its employees properly since 2018.

42. Accordingly, EPA alleges that by failing to conduct annual fit testing training to ensure safe work practices applicable to the employee's job tasks, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.71(b) and (c).

Count 4

(Failure to Comply with Compliance Audit Requirements)

43. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

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

45. Based on evidence gathered during the investigation, EPA determined that although Respondent completed a compliance audit on October 25, 2018, on the date of the inspection there were 32 remaining action items, with 17 items still in progress and 19 items that neither had dates of completion nor status and only listed the name of the responsible party.

46. Accordingly, EPA alleges that by failing to promptly determine and document an appropriate response to each of the findings of the compliance audit, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d).

D. CIVIL ADMINISTRATIVE PENALTY

47. Respondent agrees to pay a civil penalty in the amount of **TWENTY-FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS** (\$25,250) (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

48. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

49. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket numbers of this Agreement, CAA(112r)-09-2025-0016,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, EPA Region 9
R9HearingClerk@epa.gov

and

Bridget Johnson
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Johnson.Bridget@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that Regional Hearing Clerk payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

50. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7412(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed

Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

51. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which

includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

52. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

53. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

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

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

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Sherrer.Dana@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of this CA/FO per paragraph 91; and
- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

E. COMPLIANCE TASKS

55. All submissions to EPA in this section shall be submitted to Bridget Johnson at EPA at Johnson.Bridget@epa.gov.

56. If Respondent is unable to complete any of the compliance tasks required in this Section within the associated schedule, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.

57. Quarterly Progress Reports. If there are any outstanding compliance tasks set forth in this Section that have not be completed within three (3) months of the Effective Date of the CA/FO, then within three (3) months of the Effective Date of the CA/FO, and every three months thereafter until completion of all requirements of the Compliance Task Section of the CA/FO, Respondent shall submit a progress report to EPA ("Progress Report"). Each Progress Report shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

58. Certifications. If a compliance task directs Respondent to certify facts to EPA or submit a certification, Respondent shall submit a written statement containing the following language: “The undersigned hereby certifies under penalty of law, and based on information and belief formed after reasonable inquiry, that the statements and information herein and all supporting documentation are true, accurate, and complete.” The certification shall describe the tasks completed, cite to the relevant provisions of this Agreement, and be signed and dated by Respondent’s Director of Operations. If the certification is required to include photographs, Respondent shall ensure all photographs are organized and clearly labeled. Any certification submitted other than in compliance with this Agreement shall be ineffective and, if not cured prior to the applicable deadline, may trigger stipulated penalties.

59. Compliance Audit Recommendation: Within ninety (90) days of the Effective Date, Respondent shall submit to EPA a certification and documentation showing that it has completed the installation of the relief valves that were identified and recommended in the Updated Relief System Analysis dated September 12, 2023.

60. Ventilation System Upgrades. Within sixty (60) days of the Effective Date, Respondent shall submit to EPA a certification and documentation showing that Respondent completed the installation of the two fans and associated components for the ventilation system as recommended in the February 21, 2020, Resource Compliance ventilation analysis.

F. RESPONDENT’S ADMISSIONS AND WAIVERS OF RIGHTS

61. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent: (i) admits that jurisdictional allegations of this CA/FO; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to the assessment

of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in this CA/FO; and (iv) waives, any right to contest the allegations and its right to appeal the proposed final order accompanying this consent agreement.

G. SUPPLEMENTAL ENVIRONMENTAL PROJECT

62. In response to the alleged violations of CAA, and in settlement of this matter, although not required by CAA, or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described generally paragraph 63, and more specifically in Attachment A, which is incorporated herein by reference.

63. Respondent shall complete an emergency planning and preparedness SEP, consisting of purchasing and providing equipment, as described in further detail below, to the Fresno Fire Department ("FFD") in Fresno, California. FFD is an all-risk fire service organization that responds to emergency and hazardous materials incidents locally and regionally. The equipment will allow FFD to be better prepared and respond more effectively to incidents involving chemicals and other hazardous materials. Respondent shall purchase and provide to the FFD, the following equipment:

- a. One Honda Pioneer utility task vehicle ("UTV") to assist the hazardous materials response team in entering exclusion zones further away from the decontamination reduction zone for safer and faster response;
- b. One 8.5x24 feet and 14,000-pound gross vehicle weight rating trailer to haul the Honda Pioneer UTV and associated tools and equipment needed;

- c. Personal protective hazmat gear which consists of six (6) level B suits and associated head protection gear, twenty (20) hardhats, which are rated for chemical splash protection in a hazardous materials response;
- d. Refrigerant detection equipment, which includes the Inficon R-134a detector and the Bacharach Leak Detector H-10 Pro to assist firefighters in detecting refrigerant concentrations and help to reduce potential exposure to areas considered immediately dangerous to life and health;
- e. Technology package for hazmat response, including two (2) iPads and the associated devices, to assist in transferring information from the exclusion zone to the support zone for the incident commander to make sound decisions for the safety of the responding crews; and
- f. Miscellaneous pack out tool and fifty-four (54) storage bins which will assist in transporting equipment to and from the scene and keep the equipment organized between responses .

64. Respondent shall spend no less than **NINETY THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS (\$90,857)** on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Paragraph 63 does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase, and provide additional emergency response equipment to FFD.

65. Respondent shall complete the SEP within twelve (12) months after the Effective Date of this CA/FO.

66. Respondent has selected the FFD in Fresno, California to receive SEP emergency response training equipment. The EPA had no role in the selection of the SEP recipient or specific equipment identified in the SEP, nor shall this CA/FO be construed to constitute EPA approval or endorsement of the FFD or specific equipment identified in this CA/FO.

67. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's "2015 Update to the 1998 Supplemental Environmental Projects Policy," (March 10, 2015). The SEP advances at least one of the objectives of the CAA by enhancing the capabilities of local hazardous waste emergency responders and thereby minimizing the consequences of accidents that do occur. The SEP is not inconsistent with any provision of the CAA. The SEP relates to the alleged violations, and is designed to reduce the overall risk to public health and the environment potentially affected by the alleged violations (i.e., the risk of releases of hazardous substances) by improving the hazardous material emergency response capabilities of the local all-risk fire service provider.

68. 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 the Respondent in good faith estimates that the cost to implement the SEP is \$90,857;
- b. That, as of the date of executing 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;

- 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 CA/FO;
- d. That Respondent has not received and will not have received 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;
- g. That 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 63; and
- h. That Respondent has inquired of FFD whether it is 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 FFD that it is not party to such a transaction.

69. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CA/FO from the date of its execution of this CAFO shall include the following language: "This project

was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws.”

70. SEP Reports.

- a. Respondent shall provide email confirmation to the EPA official in subparagraph e below within ten (10) days of completing the SEP.
- b. Respondent shall submit a SEP Completion Report to EPA within ninety (90) of completing the SEP. The SEP Completion Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP.
- c. The certification required by subparagraph b(iv) above shall contain the following language: “I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

- d. Respondent agrees that failure to submit the SEP Completion Report required by subsections b and c above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 72 below.
- e. Respondent shall submit via email all notices and reports required by this CA/FO to:

Bridget Johnson
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Johnson.Bridget@epa.gov

- f. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. 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. Canceled 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.

71. EPA acceptance of SEP Completion Report.

- a. After receipt of the SEP Completion Report described in paragraph 70 above, EPA will notify Respondent, in writing, regarding:

- i. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
 - ii. Indicate that EPA concludes that the SEP has been completed satisfactorily;
or
 - iii. Determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 74 below.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) business days of receipt of such written notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

72. Stipulated Penalties

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 63 by the deadline in Paragraph 65 Respondent agrees to pay, in addition to the civil penalty in Paragraph 47 the following per day violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

- i. \$150 per day for days 1-30
 - ii. \$200 per day for days 31-60
 - iii. \$250 per day for days beyond 60.
- b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 70, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report as due until Respondent submits the report in its entirety:
 - i. \$100 per day for days 1-30
 - j. \$150 per day for days 31-60
 - k. \$200 per day for days beyond 60.
- c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 64 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$100,000. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$90,857 to purchase and provide emergency response equipment described in Paragraph 63 to FFD. The determination of whether the SEP has been satisfactorily completed shall be the sole discretion of EPA.
- d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 49 above. Interest and late charges shall be paid as stated in Paragraph 50.

H. PARTIES BOUND

73. 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 D has been paid, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.

74. 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.

75. 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.

76. The undersigned representative of Respondent hereby certifies that they are fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

77. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Complainant.

I. CERTIFICATION OF COMPLIANCE

78. In executing this CA/FO, Respondent certifies that under penalty of law to EPA that it has taken all steps necessary to return to full compliance with CAA Section 112(r), 42 U.S.C. §

7412(r), and its implementing regulations, that formed the basis for the violations alleged in this CA/FO.

79. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

80. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Complainant.

81. In the event that Respondent fails to meet any of the requirements of paragraph 47 of Section D Civil Administrative Penalty and Section E Compliance Requirements as set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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.

82. 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 thirty (30) 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 D of this CAFO.

83. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the thirty-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, and its implementing regulations.

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

85. 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.

K. RESERVATION OF RIGHTS

86. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

87. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

L. MISCELLANEOUS

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

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

90. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

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

92. This CA/FO can be signed in counterparts.

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

M. EFFECTIVE DATE

94. 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.

In the Wawona Frozen Foods
Consent Agreement and Final Order

FOR RESPONDENT, Wawona Frozen Foods:

9/24/24
DATE

William S. Smittcamp
William S. Smittcamp, President and CEO
Wawona Frozen Foods

FOR COMPLAINANT, EPA REGION IX:

**AMY MILLER-
BOWEN**

Digitally signed by AMY MILLER-
BOWEN
Date: 2024.10.10 08:56:31 -07'00'

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

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of Wawona Frozen Foods (Docket No. CAA (112r)-09-2025-0016) be entered, and that Respondent shall pay a civil administrative penalty in the amount of TWENTY-FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$25,250) and spend at least NINETY THOUSAND EIGHT HUNDRED FIFTY SEVEN DOLLARS (\$90,857) to implement a Supplemental Environmental Project in accordance with all terms and conditions of this CA/FO.

**BEATRICE
WONG**  Digitally signed by
BEATRICE WONG
Date: 2024.10.16
09:49:36 -07'00'

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the matter of Wawona Frozen Foods - Cedar Plant (Docket No. CAA(112r)-09-2025-0016) has been filed by Regional Hearing Clerk, and that a true and correct copy was served on the parties, via electronic mail, as indicated below:

RESPONDENT:

Dawn Kryger
Environmental Health & Safety Manager
100 W Alluvial Ave
Clovis, CA 93611
Dawn.Kryer@Wawona.com

Robyn D. Neely
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420 South Orange Avenue, Suite 1200
Orlando, FL 32801
Robyn.Neely@akerman.com

COMPLAINANT:

Ylan Nguyen
Assistant Regional Counsel
U.S. EPA – Region IX
Hazardous Waste Section III (ORC-3-3)
75 Hawthorne Street
San Francisco, CA 94105
Nguyen.Ylan@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA – Region IX