

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DARIGOLD, INC. – SPOKANE FACILITY

Spokane, Washington

Respondent.

DOCKET NO. CWA-10-2024-0169

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$26,685 per day for each day during which the violation continues, up to a maximum penalty of \$333,552. *See also* 88 Fed. Reg. 89309 (December 27, 2023) (2024 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues,

and the Darigold, Inc. Spokane Facility (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, “solid waste,” sewage,” “garbage,” “chemical wastes,” and industrial waste discharged into water.

3.5. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association”

3.6. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.”

3.7. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.8. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines necessary to carry out the provisions of the CWA.

3.9. Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.10. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification (“SIC”) code 2026 (Fluid Milk). 40 C.F.R. § 122.26(b)(14).

3.11. Pursuant to 40 C.F.R. § 122.28, EPA may issue individual permits for a facility or general permits covering one or more categories of stormwater discharges.

3.12. The State of Washington, through the Washington Department of Ecology (“Ecology”), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.13. On December 3, 2014, Ecology issued the 2015 Industrial Stormwater General Permit (“2015 ISGP”). The 2015 ISGP went into effect on January 2, 2015, and expired December 31, 2019. Ecology issued the 2020 Industrial Stormwater General Permit (“2020 ISGP”) on November 20, 2019. The 2020 ISGP went into effect on January 1, 2020, and expires December 31, 2024. The 2015 ISGP and the 2020 ISGP authorize(d) facilities conducting industrial activities to discharge stormwater and conditionally approved non-stormwater consistent with the terms and conditions of the permit.

3.14. 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, and 123.25 require that any person who discharges or who proposes to discharge stormwater associated with industrial activity must apply for an individual permit or seek coverage under a promulgated stormwater general permit.

3.15. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), if a state NPDES program is approved pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Administrator of the EPA retains the authority to take enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

General Allegations

3.16. Respondent is a corporation and therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.17. At all times relevant to this action, Respondent owned and operated the Darigold, Inc. facility located at 33 East Francis Avenue, in Spokane, Washington (“Spokane Facility” or “Facility”).

3.18. At all times relevant to this action, Respondent processed fluid milk at the Facility, an industrial activity categorized under SIC code 2026 (Fluid Milk).

3.19. At all times relevant to this action, the Facility was authorized to discharge stormwater associated with the industrial activity described above subject to the terms and conditions of the 2015 ISGP and the 2020 ISGP under Permit WAR301800.

3.20. The Facility's stormwater discharges contain "pollutants" within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.21. The Facility discharged stormwater through one identified outfall into the City of Spokane's Municipal Separate Storm Sewer System ("City of Spokane MS4").

3.22. The Facility's stormwater outfall is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

3.23. The City of Spokane MS4 discharges to the Spokane River. The Spokane River is a "navigable water" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.24. Respondent discharged pollutants from a point source into waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Alleged Violations

3.25. The United States, on behalf of Complainant, entered into a tolling agreement with Respondent to facilitate settlement negotiations without altering the claims and defenses available to any party. Pursuant to the tolling agreement, the period commencing on September 28, 2023, and ending on September 16, 2024, shall not be included in computing the running of any statute of limitations potentially applicable.

3.26. As described below, based on the EPA inspectors' observations and a review of Respondent's records, EPA alleges that between September 28, 2018, and January 20, 2022, Respondent violated certain terms and conditions of the 2015 ISGP, the 2020 ISGP, and Section 301 of the CWA, 33 U.S.C. § 1311.

Incomplete NOI

3.27. Condition S1.A of the 2020 ISGP provides that facilities conducting industrial activities listed in Table 1 of the permit must apply for coverage under the permit or apply for a Conditional No Exposure exemption, if eligible.

3.28. Condition S2.A.1 of the 2020 ISGP provides that facilities requiring coverage under the permit shall submit a complete and accurate Notice of Intent (NOI).

3.29. EPA alleges Respondent violated Condition S2.A.1 of the 2020 ISGP by failing to submit a complete and accurate NOI identifying that the Facility produces plastic jugs, an industrial activity listed in Table 1 (Plastic and Rubber Products Manufacturing) and classified under SIC code 326160 (Plastic Bottle Manufacturing).

Inadequate SWPPP Development and Implementation

3.30. Condition S3.A of the 2015 ISGP and the 2020 ISGP provides that all permittees must develop and implement a Stormwater Pollution Prevention Plan (SWPPP).

3.31. Condition S3.B of the 2015 ISGP and the 2020 ISGP provides that the SWPPP must contain a site map, a detailed assessment of the facility, a detailed description of the Best Management Practices (BMPs), a spill prevention and emergency cleanup plan, and a sampling plan.

3.32. Condition S3.B.1 of the 2015 ISGP provides that the SWPPP site map must identify areas of actual and potential pollutant contact associated with specific industrial activities (S3.B.1.g) and the 2020 ISGP provides that the SWPPP site map must identify the locations of actual and potential pollutant sources (S3.B.1.j).

3.33. Condition S3.B.2 of the 2015 ISGP and the 2020 ISGP provides that the SWPPP facility assessment must include a description of the facility; an inventory of facility activities and equipment that contribute to or have the potential to contribute any pollutants to stormwater; and an inventory of materials that contribute to or have the potential to contribute pollutants to stormwater.

3.34. Condition S3.B.2 of the 2015 ISGP and the 2020 ISGP further provides that the facility description must describe the industrial activities conducted at the site and the inventory of industrial activities must identify all areas associated with industrial activities that have been or may potentially be sources of pollutants.

3.35. Condition S3.B.2 of the 2015 ISGP and the 2020 ISGP further provides that the inventory of materials shall list, among other elements, the types of materials handled at the site that potentially may be exposed to precipitation or runoff and could result in stormwater pollution (S3.B.2.c.i) and a short narrative for each material describing the potential of the pollutant to be present in stormwater discharges, which shall be updated by the permittee when data becomes available to verify the presence or absence of these pollutants (S3.B.2.c.ii).

3.36. EPA alleges Respondent violated Condition S3.B.2 of the 2015 ISGP and the 2020 ISGP by failing to describe in its SWPPP facility descriptions the industrial activity of plastic jug production and all areas and equipment associated with plastic jug production that have been or may potentially be sources of pollutants.

3.37. EPA further alleges Respondent violated Condition S3.B.2 by failing to include in its SWPPP inventory of the materials handled at the site associated with plastic jug production that potentially may be exposed to precipitation or runoff and could result in stormwater pollution and a short narrative for each material associated with the plastic jug production describing the potential of the pollutant to be present in stormwater discharges.

3.38. Condition S3.B.4.a of the 2015 ISGP provides that the permittee describe each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards.

3.39. Condition S3.B.4.a of the 2015 ISGP further provides that the permittee must explain in detail in the SWPPP how and where the selected BMPs will be implemented.

3.40. Condition S3.B.4.b provides that the permittee shall include in the SWPPP each of the mandatory BMPs identified in Condition S3.b.4.b unless site conditions render the BMP unnecessary, infeasible, or the permittee provides alternative and equally effective BMPs, and if the permittee clearly justifies each BMP omission in the SWPPP.

3.41. EPA alleges Respondent violated Condition S3.B.4 of the 2015 ISGP and the 2020 ISGP by failing to implement any BMPs related to plastic jug production despite repeated identification of the need to clean up plastic resin and to investigate the cause of spills plastic beads.

3.42. Condition S3.B.1 of the 2015 ISGP provides that the SWPPP site map must identify, among other elements, the stormwater drainage areas for each stormwater discharge point off-site and assign a unique identifying number for each discharge point (S3.B.1.d), and identify the location of each sampling by unique identifying number (S3.B.1.e).

3.43. EPA alleges Respondent violated Condition S3.B.1 of the 2015 ISGP by failing to identify each discharge point with a unique identifying number and each sampling location with a unique identifying in its September 24, 2018, SWPPP site map.

3.44. Condition S3.B.1 of the 2020 ISGP similarly provides that the SWPPP site map must identify certain elements, including the size of the property in acres (S3.B.1.b), the locations of all structural source control BMPs (S.3.B.1.e), the locations of all stormwater monitoring points (S3.B.1.k), and the locations of stormwater inlets and outfalls with a unique identification number for each sampling point and discharge point (S3.B.1.m).

3.45. EPA alleges Respondent violated Condition S3.B.1 of the 2020 ISGP by failing to include in its December 27, 2021, SWPPP a site map that identified the size of the property in acres, the locations of all structural source control BMPs, the locations of stormwater monitoring points, and a unique identification number for each sampling and discharge point.

3.46. Condition S3.B.5 of the 2015 ISGP and the 2020 ISGP provides that the SWPPP sampling plan must specify procedures for sending samples to a laboratory (S3.B.5.f) and identify parameters for analysis, holding times and preservatives, laboratory quantitation levels, and analytical methods (S3.B.5.g).

3.47. Condition S4.A of the 2015 ISGP and the 2020 ISGP provides that the permittee shall conduct sampling of stormwater in accordance with the permit and the facility's SWPPP.

3.48. Condition S5.A of the 2015 ISGP and the 2020 ISGP provides that the permittee must sample their stormwater discharges as specified in Condition S4 and as specified in Table 2 of the permit.

3.49. Condition S5.B of the 2015 ISGP and the 2020 ISGP identifies additional sampling requirements for specific industrial groups. Specifically, Condition S5.B.1 of the 2015 ISGP and the 2020 ISGP provides that all permittees identified by an industrial activity in Table 3 shall sample stormwater discharges as specified in Condition S4 and in Table 3 of the permit.

3.50. Table 3 of the 2015 ISGP and the 2020 ISGP requires industries identified as Food and Kindred Products (SIC 20xx in the 2015 ISGP and NAICS codes 311xxx-312xxx in the 2020 ISGP) to sample for BOD₅, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total.

3.51. The Spokane Facility is subject to the additional sampling requirements in Condition S5.B, at Table 3, for Food and Kindred Products.

3.52. Condition S4.C of the 2015 ISGP and the 2020 ISGP provides that the permittee shall ensure that analytical methods used to meet the sampling requirements in the permit conform to the latest revision of the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136, unless specified otherwise in the permit.

3.53. 40 C.F.R. § 136.3(e), at Table II, provides a sample preservation requirement of Cool, ≤6 °C for Turbidity, BOD₅, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total.

3.54. EPA alleges Respondent violated Condition S4.C of the 2015 and the 2020 ISGP by failing to meet the ≤ 6 °C preservation requirement in for Turbidity, BOD₅, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total, on at least the following occasions: October 9, 2018, March 28, 2019, June 28, 2019, September 24, 2019, January 7, 2020, May 18, 2020, September 23, 2020, December 15, 2020, March 22, 2021, May 20, 2021, November 4, 2021, December 7, 2021, and December 23, 2021.

3.55. Table 3 of the 2015 ISGP and the 2020 ISGP provides the analytical method for Nitrate + Nitrate Nitrogen, as N, is SM4500 NO₃-E/F/H.

3.56. Table 3 of the 2015 ISGP and the 2020 ISGP provides the analytical method for BOD₅ is SM 5210B.

3.57. Table 3 of the 2015 ISGP and the 2020 ISGP provides that the analytical method for Phosphorus, Total, is EPA 365.1.

3.58. Table 3, footnote a, of the 2015 ISGP and the 2020 ISGP provides that the permittee may use an alternate method from 40 CFR Part 136 if the alternate method is sufficient to produce measurable results in the sample and that if the permittee uses an alternate method, it must report the test method and quantitation level (QL) on the Discharge Monitoring Report (DMR).

3.59. EPA alleges Respondent violated Condition S3.B.5 of the 2015 ISGP and the 2020 ISGP by failing to identify the correct analytical methods for Nitrate + Nitrate Nitrogen, as N, and BOD₅ in its SWPPP sampling plan.

3.60. EPA further alleges that Respondent violated Condition S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by analyzing Phosphorus, Total, using an alternative method not approved for such use under 40 CFR Part 136 on at least the following occasions: November 30, 2018, March 28, 2019, June 28, 2019, September 6, 2019, September 24, 2019, November

12, 2019, January 7, 2020, May 18, 2020, September 23, 2020, December 15, 2020, March 22, 2021, May 20, 2021, and September 19, 2021.

Failure to Submit Sampling

3.61. Condition S9.A.1 of the 2015 ISGP and Condition S9.B.1 of the 2020 ISGP provide that the permittee must submit sampling data obtained during each reporting period on a DMR.

3.62. Condition S9.D of the 2015 ISGP and Condition S9.E of the 2020 ISGP provide that if the permittee samples any pollutant at a designated sampling point more frequently than required by the permit, the permittee must include the results in the calculation and reporting of the data submitted in the DMR. If the permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

3.63. EPA alleges Respondent violated Condition S9.A.1 and S9.D of the 2015 ISGP by failing submit data associated with its September 6, 2019, sampling event in the 2019 Quarter 3 DMR.

3.64. EPA alleges Respondent violated Conditions S9.B.1 and S9.E of the 2020 ISGP by failing to submit pH sampling data from May 18, 2020, on the 2020 Q2 DMR.

Inadequate Inspections

3.65. Condition S7.A.1 of the 2015 ISGP and the 2020 ISGP provides that the permittee must conduct and document visual inspections of the site each month.

3.66. Condition S7.B of the 2015 ISGP and the 2020 ISGP provides the required elements of each inspection.

3.67. Condition S7.C.1 of the 2015 ISGP and the 2020 ISGP provides that the permittee must record the results of each inspection in an inspection report or checklist and keep the records on-site. Condition S.7.C.1 of the 2015 ISGP and the 2020 ISGP further provides that the

permittee must ensure each inspection report documents the observations, verifications and assessments required in S7.B and the elements listed in Condition S7.C.1.

3.68. EPA alleges Respondent violated Condition(s) S7.A.1 and/or S7.C.1 of the 2020 ISGP by failing to conduct an inspection during May 2020 and/or failing to record or retain on-site the results of any inspection in May 2020.

3.69. EPA alleges Respondent violated Condition S7.C.1. of the 2015 ISGP and the 2020 ISGP by failing to include all required elements in 43 inspection reports from September 2018 through December 2021.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$146,925 (“Assessed Penalty”).

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

4.5. 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>.

Respondent must note on the check the title and docket number of this action.

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-10-2024-0169,

4.6.2. 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, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Stacey Kim, Compliance Officer
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Kim.Stacey@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 payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4.7. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 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, interest, or other charges and penalties 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.

4.7.1. 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 the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS large corporate underpayment rate.

4.7.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. 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 Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. 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.

4.8.3. 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.

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. 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.

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

4.11. 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 the 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:

4.11.1. 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>.

4.11.2. 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;

4.11.3. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at henderson.jessica@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

4.11.4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.13. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

Allan Huttema, President and CEO
Darigold, Inc.

FOR COMPLAINANT:

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10