

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DARIGOLD, INC. – LYNDEN FACILITY

Lynden, Washington

Respondent.

DOCKET NO. CWA-10-2024-0171

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. Lynden 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 an 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”) codes 2023 (Dry, Condensed, and Evaporated Products). 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 8424 Depot Road, in Lynden, Washington (“Lynden Facility” or “Facility”).

3.18. At all times relevant to this action, the Facility produced primarily powdered milk, an industrial activity categorized under SIC code 2023 (Dry, Condensed & Evaporated Products).

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 Number WAR000564.

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 Lynden's Municipal Separate Storm Sewer System ("City of Lynden 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 Lynden MS4 discharges to the Nooksack River. The Nooksack River empties into Bellingham Bay, an estuary of the Pacific Ocean. The Nooksack 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 inspector's observations and a review of Respondent's records, EPA alleges that between September 28, 2018, and March 6, 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.

Prohibited Discharges

3.27. Condition S5.E of the 2015 ISGP and the 2020 ISGP provide that unless authorized by a separate NPDES or state waste discharge permit the discharge of process wastewater is not authorized. Stormwater that commingles with process wastewater is considered process wastewater. Condition S5.E.2 further prohibits illicit discharges.

3.28. EPA alleges Respondent violated Condition S5.E of the 2015 ISGP on July 17, 2019, when approximately two gallons of chocolate milk discharged into the stormwater system.

3.29. EPA alleges Respondent violated Condition S5.E of the 2015 ISGP on August 13, 2019, when a few gallons of process wastewater was discharged to the ground and washed into Depot Road where the storm-drains discharge to Fish Trap Creek.

3.30. EPA alleges Respondent violated Condition S5.E of the 2015 ISGP on December 13, 2019, when an estimated 30 gallons of sanitizing rinse spilled, a few cups of which discharged to the stormwater system.

3.31. EPA alleges Respondent violated Condition S5.E of the 2020 ISGP on August 11, 2020, when approximately 200 gallons of cream overflowed at the cream loadout and a gallon or less of cream entered the stormwater system.

3.32. EPA alleges Respondent violated Condition S5.E of the 2020 ISGP on March 6, 2022, when approximately three to five gallons of milky, sour smelling process wastewater was spilled onto the ground and subsequently less than one gallon washed onto Depot Road and into the stormwater system.

Inadequate Site Inspections and/or Site Inspection Documents

3.33. 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.

3.34. Condition S7.B.1 of the 2015 ISGP and the 2020 ISGP provides that each site inspection must include observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged off-site; or discharged to waters of the state, or to a storm sewer system that drains to waters of the state.

3.35. Condition S7.C.1 of the 2015 and 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, as part of the facility's Stormwater Pollution Prevention Plan (SWPPP).

3.36. Condition S7.C.1.c of the of the 2015 and 2020 ISGP provide that the permittee must ensure each inspection report documents the observations, verifications and assessments required in S7.B and includes, among other things, a statement that, in the judgment of 1) the person conducting the site inspection, and 2) the person described in Condition G2, the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the permit (Condition S7.C.1.c), the name, title, and signature of the person conducting the inspection (Condition S7.C.1.e), and must be certified and signed by the person described in Condition G2.A, or a duly authorized representative of the facility, in accordance with Condition G2.B and D (Condition S7.C.1.f).

3.37. EPA alleges Respondent violated Conditions S7.A and S7.C of the 2015 ISGP by failing to conduct and/or document any visual site inspections for October 2018 and October 2019.

3.38. EPA alleges Respondent violated Condition S7.C.1.c of the 2015 ISGP and the 2020 ISGP by failing to include a statement that, in the judgment of the person described in Condition G2 and /or the person conducting the site inspection, the site was in compliance or out of compliance with the terms and conditions of the SWPPP and the permit in the Monthly Stormwater Inspection Checklist for the months of September 2018, May 2019, June 2019, September 2020, April 2021, and June 2021.

Inadequate SWPPP Development and Implementation

3.39. Condition S3.A.1 of the 2015 ISGP and Condition S3.A of the 2020 ISGP provides that all permittees must develop and implement a SWPPP.

3.40. 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.

3.41. Condition S3.B.1 of the 2015 ISGP provides that the site map must identify the scale or include relative distances between significant structures and drainage systems (S3.B.1.a); the stormwater drainage and discharge structures, identifying, by name, any party other than the permittee that owns any stormwater drainage or discharge structures (S3.B.1.c); the stormwater drainage areas for each stormwater discharge point off-site, assigning a unique identifying number for each discharge point (S3.B.1.d); each sampling location by unique identifying number (S3.B.1.e); conditionally approved non-stormwater discharges (S3.B.1.h); surface water locations, including wetlands and drainage ditches (S3.B.1.i); areas of existing and potential soil erosion that could result in the discharge of a significant amount of turbidity, sediment or other pollutants (S3.B.1.j); vehicle maintenance areas (S3.B.1.k); and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes (S3.B.1.l).

3.42. EPA alleges Respondent violated Condition S3.B.1 of the 2015 ISGP by failing to include in its April 2019 SWPPP site map the scale or relative distances between significant structures and drainage systems; stormwater drainage and discharge structures; stormwater drainage areas for each stormwater discharge point off site with a unique identifying number for each discharge point; each sampling location by unique identifying number; conditionally approved non-stormwater discharges; surface water locations; areas of existing and potential soil

erosion that could result in the discharge of a significant amount of turbidity, sediment or other pollutants; vehicle maintenance areas; and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

3.43. Condition S3.B.2 of the 2020 ISGP provides that the 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. The inventory of industrial activities must identify all areas associated with industrial activities that have been or may potentially be sources of pollutants (S3.B.2.b). The inventory of materials must list 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); a short narrative description of each material describing the potential of the pollutant to be present in stormwater discharges, which the permittee must update when data become available to verify the presence or absence of these pollutants (S3.B.2.c.ii); and a narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater, including the method and location of on-site storage or disposal (S3.B.2.c.iii).

3.44. Condition S3.A.3.b of the 2020 ISGP provides that all permittees must modify the SWPPP whenever there is a change in design, construction, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.

3.45. EPA alleges Respondent violated Conditions S3.A.3, S3.B.2.b, and S.B.2.c of the 2020 ISGP by failing to update its SWPPP to reflect the evaporator project construction and operation, as well as the outdoor forklift maintenance documented by the Facility as taking place at the Facility.

3.46. Condition S3.B.4.b of the 2020 ISGP provides that the permittee must include in the SWPPP and implement certain mandatory BMPs unless site conditions render an individual BMP unnecessary or infeasible and the permittee provides alternative and equally effective BMPs. The permittee must clearly justify each BMP omission in the SWPPP.

3.47. Condition S3.B.4.b.i.2).d) of the 2020 ISGP provides that the permittee must keep all dumpsters under cover or fit with a storm resistant lid that must remain closed when not in use.

3.48. EPA alleges Respondent violated Condition S3.B.4.b.i.2).d) of the 2020 ISGP by failing to keep dumpsters without lids under cover as observed during the May 19, 2021, inspection.

3.49. Condition S3.B.4.b.i.3).d) of the 2020 ISGP provides that the permittee must clean up spills and leaks immediately (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.

3.50. EPA alleges Respondent violated Condition S3.B.4.b.i.3).d) of the 2020 ISGP by failing to clean up spills and leaks immediately as evidenced by the petroleum drips and stains observed during the May 19, 2021, inspection.

3.51. Condition S3.B.4.b.ii.2).a) of the 2020 ISGP provides that the permittee use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from industrial materials and activities.

3.52. During an Ecology inspection on May 19, 2021, the inspector observed milk spilled on the pavement sloping toward the storm-drain, as well as damaged and stained pavement suggesting that raw milk was offloaded outside the covered area. Accordingly, EPA alleges Respondent violated Condition S3.B.4.b.ii.2).a) of the 2020 ISGP by failing to have an adequate or effective structural source BMP in the raw milk receiving area.

3.53. Condition S3.B.2 of the 2015 ISGP and the 2020 ISGP provides that the facility assessment must include a description of the facility. Condition S3.B.2.a.ii provides that the facility description must describe regular business hours and seasonal variations in business hours or industrial activities.

3.54. EPA alleges Respondent violated Condition S3.B.2.a.ii of the 2015 ISGP and the 2020 ISGP by failing to describe regular business hours and seasonal variations in the April 2019 and June 2021 SWPPPs.

3.55. 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).

3.56. 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 SWPPP.

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

3.58. 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.

3.59. 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.

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

3.61. Condition S4.C of the 2015 ISGP and 2020 ISGP provides that the permittee must 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.

3.62. 40 CFR § 136.3(e), at Table II, provides that samples must be analyzed for pH within 15 minutes.

3.63. EPA alleges Respondent violated Condition S5.A of the 2020 ISGP by failing to analyze the samples for pH within 15 minutes on at least June 9, 2020.

3.64. 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.

3.65. EPA alleges Respondent violated Condition S4.C of the 2015 ISGP and the 2020 ISGP by failing to meet the ≤ 6 °C preservation requirement for Turbidity, BOD₅, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total, samples on at least the following occasions: September 17, 2019, September 22, 2019, October 7, 2019, September 23, 2020, November 3, 2020, February 1, 2021, May 27, 2021, and August 27, 2021.

3.66. Table 2 of the 2015 ISGP and the 2020 ISGP provides that the analytical method for Turbidity is EPA 180.1 Meter.

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

3.68. Table 3 provides that the analytical method for BOD₅ is SM 5210B.

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

3.70. EPA alleges Respondent violated Conditions S3.B.5 and S4.C of the 2015 ISGP and the 2020 ISGP by specifying analytical methods in the 2019 and 2021 SWPPP sampling

plans other than those identified in Table 3 or approved for use under 40 CFR Part 136 for Nitrate + Nitrate Nitrogen, as N, and BOD₅.

3.71. Table 2, footnote a, and Table 3, footnote a, of the 2015 ISGP and the 2020 ISGP provide 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).

3.72. Respondent used an alternative analytical method from 40 CFR Part 136 to analyze Turbidity on at least the following occasions: September 30, 2018, October 1, 2018, January 3, 2019, September 23, 2020, November 3, 2020, May 27, 2021, August 27, 2021, and October 22, 2021.

3.73. EPA alleges Respondent violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by failing to report the analytical method used and the QL on the DMRs associated with the above referenced sampling events.

3.74. EPA alleges that Respondent further violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by analyzing Nitrate + Nitrate Nitrogen, as N, and/or Phosphorus, Total, using alternative methods not approved for such use under 40 CFR Part 136.

3.75. Specifically, Respondent used an analytical method not approved under 40 CFR Part 136 to analyze Nitrate + Nitrate Nitrogen, as N, on at least the following occasions: October 1, 2018, January 3, 2019, April 18, 2019, July 17, 2019, August 21, 2019, August 23, 2019, September 17, 2019, September 22, 2019, October 7, 2019, March 2, 2020, June 9, 2020, September 23, 2020, November 3, 2020, February 1, 2021, May 27, 2021, August 27, 2021, and October 22, 2021.

3.76. In addition, Respondent used an analytical method not approved under 40 CFR Part 136 to analyze Phosphorus, Total, on at least the following occasions: September 23, 2020,

November 3, 2020, February 1, 2021, May 27, 2021, August 27, 2021, September 19, 2021, and October 22, 2021.

3.77. Conditions S4.B.3 of the 2015 ISGP and S4.B.4 of the 2020 ISGP provide that the permittee must record information about each stormwater sample taken and retain it on-site.

3.78. Condition S4.B.3 of the 2015 ISGP and Condition S4.B.4 of the 2020 ISGP require the permittee to record, among other elements, the method of sample preservation, if applicable (S4.B.3.f and S4.B.4.f, respectively).

3.79. EPA alleges Respondent violated Condition S4.B.3 of the 2015 ISGP and Condition S4.B.4 of the 2020 ISGP by failing to properly record the method of sample preservation on at least the following occasions: October 1, 2018, January 3, 2019, April 18, 2019, July 17, 2019, August 21, 2019, August 23, 2019, March 2, 2020, June 9, 2020, and October 22, 2021.

Unauthorized Bypass

3.80. Condition G25 of the 2020 ISGP provides that bypass, which is the intentional diversion of waste streams from any portion of a treatment facility, is prohibited except in specific circumstances described in the permit.

3.81. EPA alleges Respondent violated Condition G25 in April 2019 and February 2022 by bypassing its treatment system without prior notice to Ecology and without evidence to demonstrate that such bypasses were unavoidable to prevent loss of life, personal injury, or severe property damage and that no were no feasible alternatives to bypass.

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 \$198,000 (“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 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-10-2024-0171,

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