

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DARIGOLD, INC. – ISSAQUAH FACILITY

Issaquah, Washington

Respondent.

DOCKET NO. CWA-10-2024-0172

**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. Issaquah 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 2021 (Creamery Butter), 2023 (Dry, Condensed, and Evaporated Products), and 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 611 North Front Street, in Issaquah, Washington (“Issaquah Facility” or “Facility”).

3.18. At all times relevant to this action, the Facility produced butter, cottage cheese, sour cream, and yogurt. These industrial activities are categorized under SIC codes 2021 (Creamery Butter) and 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 Number WAR000497.

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 stormwater outfall into the City of Issaquah's Municipal Separate Storm Sewer System ("City of Issaquah 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 Issaquah MS4 discharges to the North Fork of Issaquah Creek, which flows into Lake Sammamish, the Sammamish River, and Lake Washington, before emptying into Puget Sound via the Lake Washington Ship Canal and Lake Union. The North Fork of Issaquah Creek, Lake Sammamish, the Sammamish River, Lake Washington, and Puget Sound are "navigable waters" 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 observations of EPA inspectors and a review of Respondent's records, EPA alleges that between September 28, 2018, and July 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.

#### Unauthorized Discharges

3.27. Condition S5.E.1 of the 2015 ISGP provides that unless authorized by a separate NPDES or state waste discharge permit the discharge of process wastewater is not authorized, including stormwater that commingles with process wastewater because it is considered process wastewater. Condition S5.E.2 further prohibits illicit discharges, which the permit defines as any discharge that is not composed entirely of stormwater except discharges authorized pursuant to a separate NPDES permit, or specifically identified conditionally authorized non-stormwater discharges.

3.28. EPA alleges Respondent violated Condition S5.E.1 and S5.E.2 of the 2015 ISGP by failing to prevent unauthorized process wastewater and other unauthorized non-stormwater from discharging into the stormwater system on at least the following dates: October 2, 2018, October 11, 2018, April 7, 2019, September 29, 2019, and September 30, 2019.

#### Failure to Meet Sampling Requirements

3.29. Condition S.3.A of the 2015 ISGP and the 2020 ISGP provides that the permittee must develop and implement a Stormwater Pollution Prevention Plan (SWPPP).

3.30. 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.

3.31. 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.

3.32. Condition S5.A.1 of the 2015 ISGP and the 2020 ISGP provide that the permittee must sample their stormwater discharges as specified in Condition S4 and as specified in Table 2 of the permit.

3.33. Table 2 of the 2015 ISGP and the 2020 ISGP requires all facilities to sample for pH and 40 CFR Part 136 specifies that pH samples must be analyzed with fifteen minutes of collection.

3.34. EPA alleges Respondent violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by exceeding the fifteen-minute holding time for pH samples on at least the following dates: October 1, 2018, September 23, 2020, March 19, 2021, May 18, 2021, September 17, 2021, October 29, 2021, March 2, 2022, and April 4, 2022.

3.35. Table 2 of the 2015 ISGP and the 2020 ISGP requires all facilities to sample for Turbidity and 40 C.F.R. § 136.3(e), at Table II, specifies a sample preservation requirement of Cool,  $\leq 6$  °C for Turbidity.

3.36. EPA alleges Respondent violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by failing to meet the  $\leq 6$  °C preservation requirement for Turbidity samples on at least the following occasions: October 1, 2018, September 23, 2020, March 19, 2021, May 18, 2021, September 17, 2021, and October 29, 2021.

3.37. 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.

3.38. 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 BOD<sub>5</sub>, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total, and

40 C.F.R. § 136.3(e), at Table II, specifies a sample preservation requirement of Cool,  $\leq 6$  °C for BOD<sub>5</sub>, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total.

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

3.40. EPA alleges Respondent violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by failing to meet the  $\leq 6$  °C preservation requirement BOD<sub>5</sub>, Nitrate + Nitrite Nitrogen, as N, and Phosphorus, Total, samples on at least the following dates: October 1, 2018, September 23, 2020, March 19, 2021, May 18, 2021, September 17, 2021, and October 29, 2021.

3.41. Condition S5.B, at Table 3, of the 2015 ISGP and the 2020 ISGP specifies that the analytical method for Nitrate + Nitrite Nitrogen, as N, is SM4500 NO<sub>3</sub>-E/F/H.

3.42. Condition S5.B, at Table 3, of the 2015 ISGP and the 2020 ISGP specifies that the analytical method for Phosphorus, Total, is EPA 365.1.

3.43. Table 3, footnote a, of the 2015 ISGP and the 2020 ISGP provides that the permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. Footnote a further 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 QL on the Discharge Monitoring Report (DMR). Under the 2020 ISGP, the permittee also must upload the QA/QC documentation from the lab on the QL development.

3.44. Respondent analyzed Nitrate + Nitrite Nitrogen, as N, using an alternate analytical method from 40 CFR Part 136 on at least the following occasions: October 1, 2018, September 23, 2020, March 19, 2021, May 18, 2021, September 17, 2021, and October 29, 2021.

3.45. 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 alternate analytical method used for Nitrate +



Nitrite Nitrogen, as N, and the QL on the DMRs associated with the above referenced sampling events. For the sampling events that took place under the 2020 ISGP, Respondent also failed to upload the QA/QC documentation from the lab on the QL development.

3.46. Respondent analyzed Phosphorus, Total, using an alternative method from 40 CFR Part 136 on at least the following occasions: October 1, 2018, September 23, 2020, March 19, 2021, May 18, 2021, September 17, 2021, October 29, 2021, March 2, 2022, and April 4, 2022.

3.47. EPA alleges Respondent violated Conditions S4.A, S4.C, and S5.B of the 2015 ISGP and the 2020 ISGP by analyzing Phosphorus, Total, using an unapproved analytical method, failing to report the analytical method used and the QL on the DMRs associated with the above referenced sampling events, and for the sampling events that took place under the 2020 ISGP, failing to upload the QA/QC documentation from the lab on the QL development.

#### Failure to Implement Sampling Plan

3.48. Condition S3.B.5 of the 2020 ISGP requires that the SWPPP include a sampling plan. The sampling plan must contain, among other elements, specific procedures for sending samples to a laboratory (S3.B.5.f) and must identify parameters for analysis, holding times and preservatives, laboratory quantitation levels, and analytical methods (S3.B.5.g).

3.49. In each of its SWPPPs dated July 31, 2018, March 12, 2020, and June 24, 2021, the Facility included stormwater sampling procedures as Appendix F. The stormwater sampling procedures at Appendix F requires documentation consistent with Condition S3.B.5 of the 2020 ISGP on the sample bottle and a Chain of Custody (COC) document.

3.50. EPA alleges Respondent violated Conditions S3.A, S3.B.5, and S4.A of the 2020 ISGP by failing to identify Phosphorous, Total, as a parameter to be analyzed on the sample bottle and COC for the September 23, 2020, sampling event.

3.51. EPA alleges Respondent violated Conditions S3.A, S3.B.5, and S4.A of the 2020 ISGP by failing to include the time the samples were taken on the sample bottle labels for the March 19, 2021, sampling event.

3.52. Condition S4.B.4 of the 2020 ISGP requires sample documentation for each stormwater sample taken, including, among other elements, the method of sample preservation.

3.53. EPA alleges Respondent violated Condition S4.B.4 of the 2020 ISGP by failing to record and/or document the temperature (preservation method) of the samples taken on September 17, 2021.

Failure to Conduct, Document, and/or Maintain Adequate Records of Inspections

3.54. 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.

3.55. 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 as part of the SWPPP.

3.56. Condition S7.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 Condition S7.B and includes, among other elements, the certification and signature of the person described in Condition G2.A, or a duly authorized representative of the facility, in accordance with Condition G2.B and D.

3.57. EPA alleges Respondent violated Condition S7.C.1 of the 2015 ISGP by failing to have an authorized representative sign the December 22, 2019, visual inspection report.

3.58. EPA alleges Respondent violated Condition S7.C.1 of the 2020 ISGP by failing to have an authorized representative sign the April 14, 2021, visual inspection report.

3.59. EPA alleges Respondent violated Conditions S7.A.1 and S7.C.1 of the 2015 ISGP and the 2020 ISGP by failing to conduct, document, and or maintain records of visual

inspections for May 2019, September 2019, November 2019, March 2020, June 2020, August 2020, and September 2020.

#### Inadequate SWPPP Site Map

3.60. Condition S3.B of the 2020 ISGP provides that the SWPPP must contain a site map. Condition S3.B.1 provides that the SWPPP site map must identify, among other elements, the size of the property in acres (S3.B.1.b); the direction of stormwater flow using arrows (S3.B.1.d); the locations of all structural source control BMPs (S3.B.1.e); conditionally approved non-stormwater discharges (S3.B.1.g); 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.h); the locations of all monitoring points (S3.B.1.k); the locations of stormwater inlets and outfalls with a unique identification number for each sampling point and discharge point, indicating any that are identified as substantially identical, and identify, by name, any party other than the permittee that owns any stormwater drainage or discharge structures (S3.B.1.m); combined sewers or MS4s and where facility stormwater discharges to them (S3.B.1.n); and the locations of fueling and vehicle maintenance areas (S3.B.1.o).

3.61. EPA alleges Respondent violated Condition S3.B.1 of the 2020 ISGP by failing to identify on the site map contained in its SWPPP dated March 12, 2020, the size of the property in acres; the direction of stormwater flow using arrows; the locations of stormwater outfalls with a unique identification number for each sampling point and discharge point; combined sewers or MS4s and where stormwater discharges to them; and locations of fueling and vehicle maintenance areas.

3.62. EPA alleges Respondent violated Condition S3.B.1 of the 2020 ISGP by failing to properly identify on the site map contained in its updated SWPPP dated June 24, 2021, the size of the property in acres; the direction of stormwater flow across the site; the locations of all structural source control BMPs; conditionally approved non-stormwater discharges; areas of

existing and potential soil erosion that could result in the discharge of a significant amount of turbidity, sediment, or other pollutants; the location of sampling points and discharge points with a unique identification number; the locations of fueling and vehicle maintenance areas; and all locations and sources of run-on to your site from adjacent properties that may contain pollutants.

3.63. EPA alleges Respondent further violated Condition S3.B.1 of the 2020 ISGP by failing to correct all deficiencies on the SWPPP site map dated July 22, 2022.

#### **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 \$147,000 (“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 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-10-2024-0172,

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](mailto: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:

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FOR RESPONDENT:

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Allan Huttema, President and CEO  
Darigold, Inc.

FOR COMPLAINANT:

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