

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DARIGOLD, INC. – CHEHALIS FACILITY

Chehalis, Washington

Respondent.

DOCKET NO. CWA-10-2024-0173

**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. Chehalis 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) 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 67 SW Chehalis Ave, in Chehalis, Washington (“Chehalis Facility” or “Facility”).

3.18. At all times relevant to this action, the Facility produced whole milk, non-fat milk, and buttermilk powders, industrial activities categorized under SIC codes 2023 (Dry, Condensed & Evaporated Products) and 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 Number WAR005575.

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 multiple outfalls into the City of Chehalis Municipal Separate Storm Sewer System (“City of Chehalis MS4”).

3.22. Each of the Facility’s stormwater outfalls is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

3.23. The City of Chehalis MS4 discharges to Dillenbaugh Creek. Dillenbaugh Creek is a tributary to the Chehalis River, which empties into Grays Harbor, an estuary of the Pacific Ocean. The Chehalis 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 observations of EPA inspectors and a review of Respondent's records, EPA alleges that between September 28, 2018, and April 28, 2024, Respondent violated certain terms and conditions of the 2015 ISGP, the 2020 ISGP, and Section 301 of the CWA, 33 U.S.C. § 1311.

Samples Analyzed Using Alternative Lab Method Without Documentation

3.27. 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 Stormwater Pollution Prevention Plan (SWPPP).

3.28. 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.

3.29. 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.

3.30. 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, among other parameters, Phosphorus, Total, using analytical method EPA 365.1.

3.31. 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).

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

3.33. Respondent's SWPPP dated January 25, 2019, identifies analytical method EPA 365.1 for Phosphorus, Total. The January 25, 2019, SWPPP at Table 4, footnote a, further states that the Facility shall ensure laboratory results comply with the QL specified in the table and that it may use an alternate, less sensitive method (higher detection level and quantitation level) from 40 CFR Part 136 if such method is sufficient to produce measurable results in its effluent.

3.34. Respondent used an alternative method from 40 CFR Part 136 (analytical method EPA 365.3) for Phosphorus, Total, for outfalls 5 and/or 7 on at least the following occasions: October 5, 2018, March 25, 2019, April 10, 2019, July 10, 2019, October 4, 2019, March 6, 2020, April 22, 2020, and May 6, 2020.

3.35. 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.

#### Inadequate Sample Documentation

3.36. Condition S4.B.3 of the 2015 ISGP requires sample documentation. Specifically, for each stormwater sample taken the permittee shall record certain information and retain it on site, including, among other things, the method of sample preservation, if applicable (S4.B.3.f).

3.37. EPA alleges Respondent violated Condition S4.B.3.f of the 2015 ISGP by collecting a stormwater sample on March 25, 2019, which required sample preservation, and failing to document the sample preservation method.

### Inadequate SWPPP Sampling Plan

3.38. Condition S3.A of the 2015 ISGP and the 2020 ISGP provides that all permittees shall develop and implement a SWPPP in accordance with the permit.

3.39. Condition S3.B of the 2015 ISGP and the 2020 ISGP provides specific SWPPP requirements. Condition S3.B.5 of the 2015 ISGP and the 2020 ISGP requires that the SWPPP include a sampling plan that contains certain elements. Condition S3.B.5.b of the 2015 ISGP and the 2020 ISGP provides that the sampling plan contained in the SWPPP must include documentation of why applicable parameters are not sampled at each discharge point per S4.B.2.c of the 2015 ISGP and S4.B.3 of the 2020 ISGP (if applicable).

3.40. Conditions S3.B.5.b.i and S3.B.5.b.vi of the 2015 ISGP and the 2020 ISGP provide that the sampling plan must include the location of which discharge points the permittee does not sample for applicable parameters because the pollutant concentrations are substantially identical to a discharge point being sampled and the reasons why the permittee expects the discharge points to discharge substantially identical effluents, respectively.

3.41. The Facility has seven catch basins, six of which discharge offsite, and monitors two (CB5 and CB7).

3.42. EPA alleges Respondent violated Condition S3.B.5.b of the 2015 ISGP and the 2020 ISGP by failing to include the locations of discharge points not sampled because they are substantially identical in the sampling plans in the SWPPPs dated January 25, 2019, August 25, 2021, and January 19, 2022, and by failing to include all permit required reasons for why the permittee expects the discharge points to be substantially identical.

3.43. Condition S3.B.5.g of the 2015 ISGP and the 2020 ISGP provides that the SWPPP sampling plan must identify parameters for analysis, holding times and preservatives, laboratory quantitation levels, and analytical methods.



3.44. Condition S4.C of the 2015 ISGP and the 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.

3.45. Condition S5.B, at Table 3, of the 2015 ISGP and the 2020 ISGP provides that the analytical method for BOD<sub>5</sub> is SM 5210B.

3.46. EPA alleges Respondent violated Condition S3.B.5.g and Condition S5.B, at Table 3, of the 2015 ISGP and the 2020 ISGP by indicating in the SWPPPs dated January 25, 2019, August 25, 2021, and January 19, 2022, that the lab may use analytical method EPA 405.1 or SM 5210B for BOD<sub>5</sub> because analytical method EPA 405.1 is not an approved method listed in 40 CFR Part.

#### Failure to Follow SWPPP Sampling Plan Procedures

3.47. Conditions S3.B.5.e and S3.B.5.f of the 2015 ISGP provide that the SWPPP sampling plan shall specify procedures for sample collection and handling and procedures for sending samples to a laboratory, respectively.

3.48. The Chehalis Facility's SWPPP dated January 25, 2019, includes a sampling plan that requires sample IDs on the bottles to match the sample IDs on the Chain of Custody (COC) documentation.

3.49. During the October 4, 2019, sampling event, the COC documentation provided to the lab identified that the sample was from "Catch Basin #5" whereas the sample bottle was marked "catch basin" with no additional description.

3.50. EPA alleges Respondent violated Conditions S3.B.5.e and S3.B.5.f of the 2015 ISGP by failing to comply with its SWPPP sampling plan when it submitted COC documentation that did not match the sample bottle ID on October 4, 2019.

### Inadequate SWPPP Site Map

3.51. Condition S3.B of the 2015 ISGP provides that the SWPPP must contain a site map. Condition S3.B.1 of the 2015 ISGP provides that the SWPPP site map must identify certain elements. Specifically, the SWPPP site map must identify, among other elements, the stormwater drainage and discharge structures identifying by name any party other than the permittee that owns any stormwater drainage or discharge structures (Condition S3.B.1.c); the stormwater drainage areas for each stormwater discharge point off-site and assign a unique identifying number for each discharge point (Condition S3.B.1.d); each sampling location by unique identifying number (Condition S3.B.1.e); the paved areas and buildings (Condition S3.B.1.f); the areas of pollutant contact (actual or potential) associated with specific industrial activities (Condition S3.B.1.g); surface water locations (including wetlands and drainage ditches) (Condition S3.B.1.i); and areas of existing and potential soil erosion that could result in the discharge of a significant amount of turbidity, sediment or other pollutants (Condition S3.B.1.j).

3.52. EPA alleges Respondent violated Condition S3.B.1 by failing to identify on its January 25, 2019, SWPPP site map stormwater drainage and drainage structures; the City of Chehalis's MS4 structures to which the Facility discharges; the stormwater drainage areas for each stormwater discharge point off site; each sampling location by unique identifying number; the paved areas at the Facility; a galvanized cooling tower as a potential pollutant source that was identified in an April 1, 2021, level 2 corrective action report as causing zinc exceedances; and areas of existing and potential soil erosion that could result in discharge of turbidity, sediment and other pollutants.

3.53. Condition S3.B.1 of the 2020 ISGP provides that the SWPPP site map must identify, among other elements, the size of the property in acres (S3.B.1.b); the location and extent of all buildings, structures and all impervious surfaces (S3.B.1.c); the direction of

stormwater flow using arrows (S3.B.1.d); the locations of all structural source control BMPs (S3.B.1.e); the locations of all receiving water (including wetlands and drainage ditches) in the immediate vicinity of the facility (S3.B.1.f); the 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 stormwater conveyances including ditches, pipes, catch basins, vaults, ponds, swales, etc. (S3.B.1.i); the locations of actual and potential pollutant sources (S3.B.1.j); the locations of all stormwater monitoring points (S3.B.1.k); the stormwater drainage areas for each stormwater discharge point off site, including discharges to groundwater (S3.B.1.l); 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 other party other than the permittee that owns any stormwater drainage or discharge structures (S3.B.1.m); MS4s and where stormwater discharges to them (S3.B.1.n); and the locations and sources of run-on to the site from adjacent properties that may contain pollutants (S3.B.1.p).

3.54. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its SWPPP site maps dated August 25, 2021, and January 19, 2022, the size of the property in acres.

3.55. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, SWPPP site map, and on additional maps the Chehalis Facility provided to EPA on June 9, 2022 (SWPPP site map dated April 25, 2022) and on June 21, 2022 (SWPPP site map dated June 21, 2022) portions of the property that have impervious surfaces.

3.56. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on the January 19, 2022, SWPPP site map the entire footprint of the Chehalis Facility site and the location of stormwater flow or all stormwater conveyances at the Facility.

3.57. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, April 25, 2022, and June 21, 2022, SWPPP site maps the source control berms described in the SWPPP.

3.58. EPA alleges Respondent violated Condition S3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, April 25, 2022, and June 21, 2022, SWPPP site maps unpaved areas, including gravel areas, subject to the flow of stormwater at the Facility that represent areas of potential soil erosion that could result in the discharge of a significant amount of turbidity and sediment.

3.59. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, SWPPP site map all stormwater monitoring points.

3.60. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, April 25, 2022, and June 21, 2022, SWPPP site maps the eight stormwater drainage areas described in the SWPPP as discharging to the City of Chehalis MS4.

3.61. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, April 25, 2022, and June 21, 2022, SWPPP site maps the locations of each sampling point and discharge point with a unique identification number.

3.62. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, SWPPP site map the location of the MS4 or where stormwater discharges to it.

3.63. EPA alleges Respondent violated Condition S.3.B.1 of the 2020 ISGP by failing to identify on its January 19, 2022, April 25, 2022, and June 21, 2022, SWPPP site maps run-on from the street that may contain pollutants including run-on from roadways may contribute pollutants, including sediment, oil and grease, heavy metals and debris, that can impact a facility's compliance.

### Inadequate SWPPP Facility Assessment

3.64. Condition S3.B.2 of the 2015 ISGP provides that the SWPPP must contain a detailed assessment of the facility, including 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.

3.65. Condition S3.B.2.b.viii provides that the inventory of industrial activities must identify all areas associated with industrial activities that have been or may potentially be sources of pollutants, including, but not limited to roofs or other surfaces composed of materials that may be mobilized by stormwater (e.g., galvanized roofs, galvanized fences).

3.66. EPA alleges Respondent violated Condition S3.B.2.b.viii by failing to identify in its SWPPP dated January 25, 2019, a galvanized cooling tower as a source of pollutants despite documenting in corrective action reports its understanding that the cooling tower was a source of zinc.

### Inadequate Best Management Practices

3.67. Condition S3.B.4.b of the 2020 ISGP describes the mandatory Best Management Practices (BMPs) that must be included in the SWPPP and implemented.

3.68. Condition S3.B.4.b.i.3)d) of the 2020 ISGP provides that the SWPPP must include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. In addition, the SWPPP must include the schedule/frequency for completing each maintenance task and the permittee must clean up spills and leaks immediately (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.

3.69. EPA alleges Respondent violated Condition S3.B.4.b.i.3)d) of the 2020 ISGP by failing to clean spilled/leaked industrial milk product immediately to prevent the discharge of

pollutants on at least the following dates: December 8, 2020, May 17, 2021, June 21, 2021, July 12, 2021, August 23, 2021, September 29, 2021, and May 17, 2022.

3.70. Condition S3.B.4.b.v of the 2020 ISGP provides that the SWPPP must include BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.), control off-site sedimentation, and prevent violations of water quality standards.

3.71. Condition S3.B.4.b.v.2) of the 2020 ISGP further provides that the permittee must implement and maintain filtration BMPs to remove solids from catch basins, sumps or other stormwater collection and conveyance system components (catch basin filter inserts, filter socks, modular canisters, sand filtration, centrifugal separators, etc.).

3.72. EPA alleges Respondent violated Condition S3.B.4.b.v by failing to maintain its filter sock BMP, as required by the Condition S3.B.4.b and as included in the Facility's SWPPP, from at least May 17, 2021, through December 7, 2021.

#### Inadequate Site Inspections and/or Site Inspection Documents

3.73. 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.

3.74. 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.

3.75. Condition S7.B.3 of the 2015 ISGP and the 2020 ISGP provides that each site inspection must include observations for the presence of illicit discharges such as domestic wastewater, noncontact cooling water, or process wastewater (including leachate).

3.76. Condition S7.B.6 of the 2015 ISGP and the 2020 ISGP provides that each site inspection must include an assessment of all BMPs that have been implemented, noting the effectiveness of BMPs inspected (S7.B.6.a); the locations of BMPs that need maintenance

(S7.B.6.b); the reason maintenance is needed and a schedule for maintenance (S7.B.6.c); and the locations where additional or different BMPs are needed and the rationale for the additional or different BMPs (S7.B.6.d).

3.77. 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. Condition S7.C.1 further provides that the permittee must ensure each inspection report documents the observations, verifications and assessments required in S7.B and includes, among other things, the time and date of the inspection (S7.C.1.a), locations inspected (S7.C.1.b), and the name, title, and signature of the person conducting the site inspection (S7.C.1.e).

3.78. EPA alleges Respondent violated Condition S7.A.1, S7.B.3, S7.B.6, and S7.C of the 2015 ISGP by failing to conduct and/or document an adequate site inspection that included observations of the presence of illicit discharges and the assessment of BMPs on April 17, 2019.

3.79. EPA alleges Respondent violated Conditions S7.C.1.a, S7.C.1.b, S7.C.1.e of the 2015 ISGP and the 2020 ISGP by failing to include the time of day, the locations inspected, or the title of inspector on the Monthly Stormwater Inspection Checklists from September 2018 through December 2021.

3.80. EPA alleges Respondent violated Condition S7.C.1.b of the 2020 ISGP by failing to include the locations inspected or the title of the inspector on the Monthly Stormwater Inspection Checklists for January 2022 and February 2022 and failing to include the locations inspected for March 2022 and April 2022.

#### Prohibited Discharges

3.81. Condition S5.E of the 2020 ISGP provides that unless authorized by a separate NPDES or state waste discharge permit the discharge of process wastewater is not authorized. Condition S5.E.2 further prohibits illicit discharges.

3.82. EPA alleges Respondent violated Condition S5.E of the 2020 ISGP by allowing industrial product, including milk and butterfat, to comingle with stormwater, resulting in illicit discharges, as evidenced by inspections conducted by Facility staff on at least the following occasions: February 10, 2021, May 17, 2021, December 7, 2021, and March 22, 2022.

3.83. EPA alleges Respondent violated Condition S5.E of the 2020 ISGP on April 28, 2024, when, as a result of a valve failure, approximately 278,000 pounds of buttermilk was released from a storage tank, a portion of which resulted in an unauthorized discharge of buttermilk from the Facility.

#### **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 \$249,500 (“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-10-2024-0173,

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:

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