

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DARIGOLD, INC. – CALDWELL
FACILITY

Caldwell, Idaho

Respondent.

DOCKET NO. CWA-10-2024-0174

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. Caldwell 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”) code 2021 (Creamy Butter Manufacturing), 2023 (Dry, Condensed and Evaporated Dairy Production), and 2026 (Fluid Milk Production). 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. On June 4, 2015, EPA issued the Multi-Sector General Permit (“2015 MSGP”). The 2015 MSGP authorizes operators of stormwater discharges associated with industrial activity in areas where EPA is the permitting authority to discharge to waters of the United States in accordance with the terms and conditions of the 2015 MSGP. The 2015 MSGP became effective in the State of Idaho on August 12, 2015, and expired on June 3, 2020. EPA issued the 2021 MSGP on January 15, 2021. The 2021 MSGP became effective on March 1, 2021. The 2015 MSGP was administratively continued to include discharges covered prior to permit expiration through the effective date of the 2021 MSGP.

3.13. 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.

3.14. CWA Section 402(b) authorizes EPA to delegate NPDES permitting authority to authorized states. 33 U.S.C. § 1342(b); 40 C.F.R. Part 123.

3.15. On June 5, 2018, EPA approved Idaho’s application to administer the Idaho Pollutant Discharge Elimination System program in Idaho. 83 Fed. Reg. 27769 (June 14, 2018). Idaho assumed permitting and compliance authority for the NPDES program in phases. Non-Publicly Owned Treatment Works permits, including the Caldwell Facility’s Individual NPDES Permit, transferred to Idaho Department of Environmental Quality (“IDEQ”) on July 1, 2019. Stormwater permits, including the Multi-Sector General Permit, were transferred on July 1, 2021. *Id.*

3.16. 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

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

3.18. At all times relevant to this action, Respondent owned and operated the Darigold, Inc. Facility located at 520 Albany Street in Caldwell, Idaho (“Caldwell Facility” or “Facility”).

3.19. At all times relevant to this action, the Facility received and processed whole milk into non-fat dry milk and cream (Standard Industrial Classification code 2023) and processed butter (SIC code 2021). As a result of those operations, the Facility discharged 300,000 gallons per day (gpd) of evaporated condensate of whey (“COW” water) through its outfall. The Facility also used single pass cooling water from municipal potable water well systems in its ammonia compressors, cream silo jackets, and cooling towers.

3.20. At all times relevant to this action, the Facility was authorized to discharge pollutants associated with the industrial activity described above through its outfall into the Lower Boise River under NPDES Permit No. ID0024953 (“Individual NPDES Permit”). The Individual NPDES Permit became effective on November 1, 2019.

3.21. The Facility’s industrial discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.22. The outfall covered under the Individual NPDES Permit is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

3.23. The outfall covered under the Individual NPDES Permit discharges to the Lower Boise River. The Boise River connects to the Snake River, then to the Columbia River before emptying into the Pacific Ocean. The Boise River is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.24. On October 12, 2021, a fire destroyed part of the Caldwell Facility. IDEQ inspected the Facility on April 7, 2022, to determine compliance with the Individual NPDES

Permit. During the April 7, 2022, inspection, IDEQ verified that the Facility was no longer operating the equipment or processes covered by the Facility's Individual NPDES Permit and recommended permit termination. IDEQ notified the Facility on May 24, 2022, that the Facility's Individual NPDES Permit would be terminated effective June 22, 2022.

3.25. At all times relevant to this action, Respondent was also authorized to discharge stormwater associated its industrial activity. Respondent applied for coverage under the 2015 MSGP and on December 9, 2015, EPA authorized the Facility to discharge stormwater associated with its industrial activities subject to the terms and conditions of the MSGP under Permit Reference No. IDR053109. Since March 1, 2021, the Facility's stormwater discharges have been covered under the 2021 MSGP.

3.26. 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).

3.27. The Facility discharged stormwater through multiple outfalls into the City of Caldwell Municipal Separate Storm Sewer System ("City of Caldwell MS4").

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

3.29. The City of Caldwell MS4 discharges to the Boise River. As described above, the Boise River connects to the Snake River, then to the Columbia River before emptying into the Pacific Ocean. The Boise River is a "navigable water" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.30. 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

3.1. On September 26, 2018, and May 24, 2021, EPA conducted compliance evaluation inspections at the Facility to determine Respondent's compliance with the CWA and the Facility's NPDES permits.

3.2. 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.

3.3. As described below, based on the EPA inspectors' observations and a review of Respondent's records, EPA alleges that between September 28, 2018, and April 7, 2022, Respondent violated certain terms and conditions of the 2015 MSGP, the 2021 MSGP, the Individual NPDES Permit, and Section 301 of the CWA, 33 U.S.C. § 1311.

Effluent Limit Violations

3.4. Part I.A. of the Individual NPDES Permit provides that the permittee is authorized to discharge pollutants from outfall 001 specified therein to the Boise River, within the limits and subject to the conditions set forth therein. The Individual NPDES Permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations clearly identified in the permit application process.

3.5. Part I.B.1 of the Individual NPDES Permit provides that the permittee must limit and monitor discharges from outfall 001 as specified in *Table 1. Effluent Limitations and Monitoring Requirements* below. Part I.B.1 further provides that the permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of the permit.

3.6. Part I.B.1 of the Individual NPDES Permit, at Table 1, provides that the monthly average concentration of BOD₅ in the effluent shall not be greater than 30 mg/L.

3.7. EPA alleges Respondent violated Part I.B.1 by exceeding the monthly average concentration for BOD in January 2020, August 2020, and October 2020.

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
January 2020	BOD	30	34.5	mg/L
August 2020	BOD	30	30.8	mg/L
October 2020	BOD	30	46.5	mg/L

3.8. Part I.B.1 of the Individual NPDES Permit provides that the instantaneous maximum for *E. coli* shall not be greater than 406/100 ml.

3.9. EPA alleges Respondent violated Part I.B.1 by exceeding the instantaneous maximum for *E. coli* three times in January 2020, May 2020, and May 2021.

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
January 2020	<i>E. coli</i>	406	2400	CFU/100 ml
May 2020	<i>E. coli</i>	406	2400	CFU/100 ml
May 2021	<i>E. coli</i>	406	2400	CFU/100 ml

3.10. Part I.B.1 of the Individual NPDES Permit provides that the average monthly counts for *E. coli* shall not be greater than 126 CFU/100 ml. Footnote 2 of Table 1 further provides that the average monthly *E. coli* bacteria counts must not exceed a geometric mean of 126/100 ml based on a minimum of five samples taken every 3 to 7 days within a calendar month.

3.11. EPA alleges Respondent violated Part I.B.1 by exceeding the monthly geometric mean in January 2020.

Month of Violation	Pollutant	Permit Limit	Value Reported	Unit
January 2020	<i>E. coli</i>	126	160.8	100 ml

Failure to Include all Required QAP Elements

3.12. Part II.A of the Individual NPDES Permit provides that the permittee must develop a quality assurance plan (QAP) for all monitoring required by the permit.

3.13. Part II.A.3.a provides that the QAP must include details on the number of samples, type of sample containers, preservation of samples, holding times and temperatures, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirement, sample shipping methods, and laboratory data delivery requirements.

3.14. EPA alleges Respondent violated Part II.A.3.a by failing to include in the Facility's QAP the preservation requirement for each parameter; maximum holding times for each parameter; analytical detection limits for each parameter (i.e., method detection limit); and type and number of quality assurance samples.

Unauthorized Discharges

3.15. Parts 1.1.2 of the 2015 MSGP and 1.2.1 of the 2021 MSGP provide the stormwater discharges allowable under the respective permits.

3.16. Parts 1.1.3.1 of the 2015 MSGP and 1.2.2 of the 2021 MSGP provide a list of the only non-stormwater discharges authorized for all sectors under the respective permits.

3.17. Parts 1.1.4.1 of the 2015 MSGP and 1.2.2.1.k of the 2021 MSGP provide that stormwater discharges that are mixed with non-stormwater discharges, other than those mixed with a discharge authorized by a different NPDES permit and/or discharge that does not require NPDES authorization, are not eligible for coverage under the respective permits.

3.18. EPA alleges Respondent violated the 2015 and 2021 MSGPs' prohibitions on discharges of stormwater mixed with industrial products as described above by allowing wash water mixed with milk powder deposited on the roof from Facility operations to flow into the Facility's stormwater outfalls on at least the following dates: March 21, 2019, August 19, 2019,

March 16, 2020, May 11, 2020, September 8, 2020, January 20, 2021, June 24, 2021, and August 11, 2021.

Failure to Select, Design, Install, and/or Implement Adequate Control Measures

3.19. Part 2.1 of the 2015 MSGP and the 2021 MSGP provides that the permittee must select, design, install, and implement control measures (including best management practices) to minimize pollutant discharges that address, among other things, the selection and design considerations in Part 2.1.1 and meet the non-numeric effluent limits in Part 2.1.2 of the respective permits.

3.20. Part 2.1.2.1 of the 2015 MSGP and the 2021 MSGP provides that the permittee must minimize exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff under the 2015 MSGP and rain, snow, snowmelt, and stormwater under the 2021 MSGP in order to minimize pollutant discharges by either locating these industrial materials and activities inside or protecting them with storm resistant coverings.

3.21. Part 2.1.2.1 of the 2015 MSGP and the 2021 MSGP further provides that, unless infeasible, the permittee must use grading, berming or curbing to prevent runoff under the 2015 MSGP or discharge under the 2021 MSGP of contaminated flows and divert run-on away from these areas; locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge; and under the 2015 MSGP clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants.

3.22. Part 2.1.2.2 of the 2015 MSGP and the 2021 MSGP provides that the permittee must keep clean all exposed areas that are potential sources of pollutants and requires that the permittee perform good housekeeping measures in order to minimize pollutant discharges, including but not limited to sweeping or vacuuming at regular intervals or alternatively, washing

down areas and collecting and/or treating, and properly disposing of the washdown water; storing materials in appropriate containers; and keeping all dumpster lids closed when not in use. For dumpsters and roll off boxes that do not have lids and could leak, the permittee must ensure discharges have a control (e.g., secondary containment, treatment) and, consistent with Part 1.1.3 of the 2015 MSGP and Part 1.2.2 of the 2021 MSGP, dry weather discharges from dumpsters or roll off boxes are not authorized.

3.23. Part 2.1.2.2 of the 2015 MSGP and the 2021 MSGP further provides that the permittee must minimize the potential for waste, garbage, and floatable debris to be discharged by keeping exposed areas free of such materials, or by intercepting them before they are discharged.

3.24. EPA alleges that Respondent violated Parts 2.1.2.1 and 2.1.2.2 of the 2015 MSGP and the 2021 MSGP by failing to implement control measures to minimize pollutant discharges from the trash compactor at the Facility by locating it inside or protecting it with storm resistant coverings; locating it so that potential leaks and spills would be contained or diverted before discharge to a stormwater outfall; or using grading, berming, or curbing to prevent runoff of contaminated flows from the area, which resulted in fluid leaking from the trash compactor.

3.25. EPA alleges that Respondent violated Part 2.1.2.1 of the 2021 MSGP by failing to remove absorbent material that had been previously applied to leaked/spilled fluid from under the trash compactor.

3.26. EPA alleges that Respondent violated Part 2.1.2.2 of the 2015 MSGP and the 2021 MSGP by failing to implement adequate controls to minimize pollutant discharges from its “open-top” dumpsters, such as secondary containment or treatment measures when the Facility disposed of industrial product in the dumpster and the dumpster could, and did, leak.

3.27. EPA alleges Respondent violated Part 2.1.2.2 of the 2021 MSGP by failing to minimize the potential for waste, garbage, and floating debris to be discharged by keeping areas

free of such materials, or by intercepting them before they are discharged, as evidenced by accumulated sediment, grit, trash, including cigarette butts, and standing water at a stormwater outfall.

3.28. Part 2.1.2.4 of the 2015 MSGP and the 2021 MSGP provides that the permittee must minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur in order to minimize pollutant discharges.

3.29. Part 2.1.2.4 of the 2015 MSGP and the 2021 MSGP further provide that the permittee must conduct spill prevention and response measures, including but not limited to, plainly labeling containers (e.g., “Used Oil,” “Spent Solvent,” “Fertilizers and Pesticides”) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur and implementing procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas.

3.30. EPA alleges Respondent violated Part 2.1.2.4 of the 2015 MSGP and the 2021 MSGP by failing to minimize the exposure of material storage areas containing many uncovered, uncontained, 55-gallon drums, including a 55-gallon drum labeled “caustic” located upgradient from a stormwater outfall, multiple 55-gallon drums of sanitizing chemical stored outside of the bulk chemical storage building in the eastern parcel, a full 55-gallon drum immediately outside of the bulk chemical storage building labeled with a blank hazardous waste label, and a storage area for empty 55-gallon drums near the wastewater treatment plant and one of the Facility’s stormwater outfalls.

3.31. EPA alleges Respondent violated Part 2.1.2.4 of the 2015 MSGP and the 2021 MSGP by failing to implement spill prevention and response procedures, such as secondary

containment or barriers around areas where 55-gallon drums were stored, or similarly effective means designed to prevent the discharge of pollutants from these material storage areas.

3.32. EPA alleges Respondent further violated Part 2.1.2.4 of the 2021 MSGP by failing to properly label the full 55-gallon drum stored immediately outside of the bulk chemical storage building that could be susceptible to spillage or leakage, which also further frustrated the Facility's ability to identify and properly handle the contents of the container and facilitate an appropriate spill response if a leak or spill were to occur.

Failure to Conduct Routine Facility Inspections During Stormwater Discharge

3.33. Part 3.1 of the 2015 MSGP requires the permittee to conduct routine facility inspections at least quarterly.

3.34. Part 3.1 further requires that, at least once each calendar year, the permittee conduct the routine inspection during a period when a stormwater discharge is occurring.

3.35. EPA alleges Respondent violated Part 3.1. of the 2015 MSGP by failing to conduct at least one routine facility inspection during a period when a stormwater discharge was occurring in 2020.

Failure to Conduct and/or Document Adequate and/or Timely Corrective Action

3.36. Part 4.1 of the 2015 MSGP provides that when certain conditions occur or are detected during an inspection, monitoring or other means, or EPA or the operator of the MS4 to which the permittee discharges informs the permittee that any of the listed conditions have occurred, the permittee must review and revise, as appropriate, the Stormwater Pollution Prevention Plan (SWPPP) (e.g., sources of pollution; spill and leak procedures; non-stormwater discharges; the selection, design, installation and implementation of your control measures) so that the permit's effluent limits are met and pollutant discharges are minimized. The list of conditions includes "whenever a visual assessment shows evidence of stormwater pollution (e.g., color, odor, floating solids, settled solids, suspended solids, foam)."

3.37. Part 4.2 of the 2015 MSGP provides that when certain conditions occur, the permittee must review the SWPPP (e.g., sources of pollution, spill and leak procedures, non-stormwater discharges, selection, design, installation, and implementation of your control measure) to determine if modifications are necessary to meet the effluent limits in the permit. The list of conditions includes when “the average of four quarterly sampling results exceeds an applicable benchmark” and notes that “[i]f less than four benchmark samples have been taken, but the results are such that an exceedance of the four-quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level), [that] is considered a benchmark exceedance, triggering a review.”

3.38. Part 4.3 of the 2015 MSGP describes corrective action timing and deadlines. Part 4.3.1 of the 2015 MSGP provides that if corrective action is needed, the permittee must immediately take all reasonable steps necessary to minimize or prevent a discharge of pollutant until a permanent solution is installed and made operational, including to clean up any contaminated surfaces so that the material will not discharge in subsequent storm events.

3.39. Under Part 4.3.2 of the 2015 MSGP, if the permittee determines that additional actions are necessary beyond those implemented pursuant to Part 4.3.1, it must complete the corrective action before the next storm event if possible, and within 14 calendar days from the time of discovery of the corrective action condition.

3.40. Part 4.3.2 further provides that where corrective actions result in changes to any controls or procedures documented in the SWPPP, the SWPPP must be modified accordingly within 14 days.

3.41. Part 4.3.2 further provides that these time intervals are not grace periods, but are schedules considered reasonable for documenting findings and making repairs and improvements, which are included in the permit to ensure that conditions prompting the need for repairs and improvement do not persist indefinitely.

3.42. Part 4.4 of the 2015 MSGP describes corrective action documentation. Part 4.4 of the 2015 MSGP requires the permittee to document the existence of any of the conditions listed in Parts 4.1 or 4.2 within 24 hours of becoming aware of such condition. Part 4.4 further requires the permittee to summarize its findings in the annual report per Part 7.5 and specifies that the permittee must include a description of the condition triggering the need for corrective action review; the date the condition was identified; a description of immediate actions taken pursuant to Part 4.3.1 to minimize or prevent the discharge of pollutants; and a statement, signed and certified in accordance with Appendix B, Subsection 11 of the permit. Part 4.4 further requires the permittee to document the corrective actions taken or to be taken as a result of the conditions listed in Part 4.1 or 4.2 (or, for triggering events in Part 4.2 where you determine that corrective action is not necessary, the basis for this determination) within 14 days from the time of discovery of any of those conditions.

3.43. During quarterly visual assessments on October 4, 2018, December 18, 2018, February 27, 2019, April 8, 2019, October 19, 2019, December 12, 2019, January 24, 2020, and May 14, 2020, the Facility identified either a brown color, cloudy conditions, odor, floating and settled solids, or a combination of these conditions in stormwater samples.

3.44. EPA alleges Respondent violated Parts 4.1 and 4.4 of the 2015 MSGP by failing to conduct and/or document SWPPP reviews or revisions in response to the quarterly visual assessment observations on the above listed dates.

3.45. EPA further alleges Respondent violated Parts 4.3 and 4.4 of the 2015 MSGP by failing to identify and document the corrective actions taken or to be taken in response to these visual assessment observations within 14 days from the time of discovery and therefore failing to include all required information, including corrective actions taken as a result of its findings.

3.46. During routine facility inspections on December 18, 2018, March 25, 2019, September 26, 2019, December 18, 2019, March 05, 2020, and June 11, 2020, the Facility noted

ongoing problems with the trash compactor, open dumpsters, powder on the roof, and the chemical containment area, and identified the need for corrective action.

3.47. EPA alleges Respondent violated Parts 4.3 and 4.4 of the 2015 MSGP by failing to determine and/or document whether modifications of the SWPPP were necessary to meet effluent limitations in the 2015 MSGP in response to the routine facility inspections on the above listed dates.

3.48. The Facility exceeded at least one applicable benchmark value on October 4, 2018, December 18, 2018, April 8, 2019, October 19, 2019, December 12, 2019, May 14, 2020, November 13, 2020, December 17, 2020, and January 29, 2021.

3.49. EPA alleges Respondent violated Parts 4.2 and 4.4 of the 2015 MSGP by failing to conduct and/or document SWPPP review to determine if modifications were necessary.

3.50. EPA alleges Respondent violated Parts 4.3 and 4.4 of the 2015 MSGP by failing to conduct and/or document adequate and timely corrective action in response to its benchmark exceedances, despite being aware of the ongoing deposition of milk powder on the roof and the need for corrective action. Respondent failed to immediately take all reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution could be installed and made operational, including cleaning up any contaminated surfaces so that the material would not discharge in subsequent storm events.

Failure to Identify All Required SWPPP Site Map Elements

3.51. Parts 5.2.2 of the 2015 MSGP and 6.2.2.3 of the 2021 MSGP provide a list of SWPPP site map requirements.

3.52. EPA alleges Respondent violated Part 5.2.2 of the 2015 MSGP and Part 6.2.2.3 of the 2021 MSGP by including in its SWPPP a site map that was illegible and, at a minimum, failed to identify the locations of all stormwater control measures; the locations of all stormwater monitoring points; the locations of stormwater inlets and outfalls/discharge points, with a unique

identification code for each outfall/discharge point, indicating if one or more is being treated as “substantially identical” under the provisions of the applicable permit, and an approximate outline of the areas draining to each outfall/discharge point; the locations of all stormwater conveyances including ditches, pipes, and swales; the locations of potential pollutant sources identified under Part 5.2.3.2 of the 2015 MSGP and Part 6.2.3.2 of the 2021 MSGP; the locations of municipal separate storm sewer systems and where stormwater discharges to them; the locations of certain activities where such activities are exposed to precipitation; and the locations and sources of run-on to the site from adjacent property that contains significant quantities of pollutants.

Failure to Monitor Outfall 006

3.53. Part 6 of the 2015 MSGP provides that the permittee must collect and analyze stormwater samples and document monitoring activities consistent with the procedures described in the permit.

3.54. Part 6.2 of the 2015 MSGP identifies the required analytical monitoring, including benchmark monitoring.

3.55. Part 6.2.1.1 of the 2015 MSGP requires the permittee to monitor for any benchmark parameters specified for the industrial sector(s), both primary industrial activity and any co-located industrial activities, applicable to the facility’s discharge. Pursuant to Part 6.2.1.2 of the 2015 MSGP, benchmark monitoring must be conducted quarterly.

3.56. Part 6.1.1 of the 2015 MSGP provides that applicable monitoring requirements apply to each outfall authorized by the permit, except as otherwise exempt from monitoring as a “substantially identical outfall.”

3.57. Part 6.1.1 of the 2015 MSGP further provides that if the facility has two or more outfalls that the permittee believes discharge substantially identical effluents, based on the similarities of the general industrial activities and control measures, exposed materials that may

significantly contribute pollutants to stormwater, and runoff coefficients of their drainage areas, it may monitor the effluent of just one of the outfalls and report that the results also apply to the substantially identical outfall(s).

3.58. Part 6.1.1 of the 2015 MSGP further provides that the SWPPP must identify each outfall authorized by the permit and describe the rationale for any substantially identical outfall determination as required by Part 5.2.5.3 of the permit.

3.59. Part 3.2.1 of the 2015 MSGP provides that, once per quarter, the permittee must collect a stormwater sample from each outfall, except as noted in Part 3.2.3, and conduct a visual assessment of each of these samples.

3.60. Part 3.2.3 of the 2015 MSGP provides, in relevant part, that if the facility has two or more outfalls that discharge substantially identical effluents, as documented in Part 5.2.5.3, you may conduct quarterly visual assessments of the discharge at just one of the outfalls and report that the results also apply to the substantially identical outfall(s) provided that you perform visual assessments on a rotating basis of each substantially identical outfall throughout the period of your coverage under the permit.

3.61. Part 5.2.5.3 provides, in relevant part, that if the permittee plans to use the substantially identical outfall exception to its quarterly visual assessment requirements in Part 3.2.3 or its benchmark monitoring requirements in Parts 6.2.1, it must document specific information in its SWPPP, including the location of each of the substantially identical outfalls; a description of the general industrial activities conducted in the drainage area of each outfall; a description of the control measures implemented in the drainage area of each outfall; a description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to stormwater discharges; an estimate of the runoff coefficient of the drainage areas; and why the outfalls are expected to discharge substantially identical effluents.

3.62. EPA alleges Respondent violated Parts 6.1.1, 3.2.3, and 5.2.5.3 of the 2015 MSGP by failing to describe in its SWPPP the rationale for its determination that outfall 006 was substantially identical to outfall 002.

3.63. In 2020, the Facility reassessed outfall 006, determined it was not substantially identical to outfall 002, and correctly included outfall 006 in its 2021 MSGP Notice of Intent. Because the conditions at the Facility did not change between 2015 and 2020 and because Respondent had improperly, and without documentation, identified outfall 006 as substantially identical to outfall 002, EPA alleges Respondent violated Parts 6.2.1.1 and 3.2.2 of the 2015 MSGP during each quarter from 2018 through 2020 by failing to conduct visual assessment and benchmark monitoring at outfall 006.

Failure to Sample Outfall 001 Prior to Commingling/Failure to Obtain Representative Samples

3.64. Part 6.1.2 of the 2015 MSGP and Part 4.1.2 of the 2021 MSGP provide that if discharges authorized by the permit commingle with discharges not authorized under the permit, the permittee must conduct any required sampling of the authorized discharges at a point before they mix with other waste streams, to the extent practicable.

3.65. EPA alleges that between September 28, 2018, and May 24, 2021, Respondent violated Part 6.1.2 of the 2015 MSGP and 4.1.2 of the 2021 MSGP by taking stormwater samples at outfall 001 after stormwater discharges were commingled with stormwater run-on from Albany Street.

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 \$318,000 (“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-10-2024-0174.

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