UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Sent Via Email:
zpinter@freshdelmonte.com

Mr. Edwardo Bezerra
Senior Vice President and CFO
Del Monte Fresh Produce (West Coast), Inc.
c/o Zoltan Pinter
VP, Associate General Counsel Commercial Operations
Del Monte Fresh Produce Company
241 Sevilla Avenue
Coral Gables, Florida 33134

MAY 17 2019

RE: Consent Agreement and Final Order
In the Matter of Del Monte Fresh Produce (West Coast), Inc.

Dear Mr. Bezerra:

Please find enclosed a copy of the final executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX, and Del Monte Fresh Produce (West Coast), Inc. This CA/FO sets out the terms for resolution of the Clean Air Act Section 112(r) violations discovered during a routine compliance evaluation inspection at the Del Monte Fresh Produce facility, located at 1810 Academy Avenue, Sanger, California, 93657. Del Monte's full compliance with the terms of this CA/FO will close this case. If you have any questions regarding the regulations governing your operations or the rules which govern the proceedings terminated by the enclosed document, please have your counsel contact Myles Saron, in the Office of Regional Counsel, at (415) 972-3911.

Sincerely,

Amy Miller, Acting Director
Enforcement and Compliance Assurance Division

Enclosure
cc (via email): Myles Saron, Assistant Regional Counsel
U.S. EPA, reynolds.rebekah@epa.gov

Donald Nixon, Environmental Engineer
U.S. EPA, nixon.donald@epa.gov

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

** FILED **

17MAY2019 - 04:15PM
U.S.EPA - Region 09

IN THE MATTER OF: Del Monte Fresh Produce (West Coast), Inc. 1810 Academy Avenue Sanger, California Respondent.	)	**Docket No.** CAA(112r)-09-2019-0030 **CONSENT AGREEMENT AND FINAL ORDER** **40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A) and (d), 42 U.S.C. § 7413(d), Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

3. Respondent is Del Monte Fresh Produce (West Coast), Inc., ("Respondent").

4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA, CERCLA, and EPCRA. Delegation 7-6-A, dated August 4, 1994 (CAA); Delegation 14-31, dated May 11, 1994 (CERCLA); Delegation 22-3-A, dated July 20, 2016 (EPCRA). The Regional

Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013 (CAA); Regional Delegation R9-14-31, dated May 1, 2019 (CERCLA); Regional Delegation R9-22-3-A, dated February 11, 2013 (EPCRA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and its implementing regulations.

6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates a fresh produce storage and distribution center at 1810 Academy Avenue, in Sanger, California (the "Facility"). Fresh produce is stored prior to shipment to distribution, some with the aid of an ammonia refrigeration system.

8. On April 25, 2017, EPA performed inspections of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA, EPCRA and CERCLA.

9. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

10. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3). The Facility is also a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

12. At all times referred to herein, Respondent was the "owner or operator" of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

13. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413, Section 104 of the CERCLA, 42 U.S.C. § 9604, and Section 302 of the EPCRA, 42 U.S.C. § 11002.

CAA Section 112(r)

14. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary source in order to protect human health and the environment.

15. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as "regulated toxic substances," the TQs are specified at 40 C.F.R. § 68.130, Table 1.

16. Ammonia (anhydrous) is a "regulated toxic substance" listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

17. At all times relevant to this CA/FO, Respondent has 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

CERCLA Section 103, EPCRA Section 304

18. CERCLA Section 103(a), 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined in the statute at Section 101(9), 42 U.S.C. § 9601(9), to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity ("RQ").

19. Section 304 of EPCRA, 42 U.S.C. § 11004, requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to immediately notify the appropriate governmental entities of any release that requires notification under section 103 of CERCLA, and of any release in an amount that meets or exceeds the RQ of an extremely hazardous substance listed under section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the designated state emergency planning commission ("SERC") for each state likely to be affected by the release.

20. Ammonia is a "hazardous substance" as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and it is also an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3). The RQ for ammonia for both CERCLA and EPCRA, as listed in 40 CFR Part 302, Table 302.4, and 40 CFR Part 355, Appendix A, is one hundred (100) pounds.

C. ALLEGED VIOLATIONS

21. Based on the facts above, EPA alleges that Respondent has violated Section 103 of CERCLA, Section 304 of EPCRA, Section 112(r)(7) of the CAA, and the codified rules of 40 CFR Part 68, governing the CAA's Chemical Accident Prevention Provisions, as follows:

COUNT I

(Failure to Immediately Notify the NRC of a Release of an RQ of Anhydrous Ammonia)

22. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. On June 29, 2016, Respondent's facility released an RQ of anhydrous ammonia. Respondent had actual or constructive knowledge of the anhydrous ammonia release at 5:30 a.m., but Respondent failed to notify the National Response Center ("NRC") until 8:44 a.m.

24. By failing to immediately notify the NRC as soon as it had knowledge of the release of an RQ of anhydrous ammonia on June 29, 2016, Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603.

COUNT II

(Failure to Immediately Notify the SERC of a Release of an RQ of Anhydrous Ammonia)

25. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

26. On June 29, 2016, Respondent's facility released an RQ of anhydrous ammonia, Respondent had actual or constructive knowledge of the anhydrous ammonia release at 5:30 a.m.,

but Respondent failed to notify the California Office of Emergency Services, which functions as the SERC in California, until 8:40 am.

27. By failing to immediately notify the California Office of Emergency Services as soon as it had knowledge of the release of an RQ of anhydrous ammonia on September 23, 2014, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

COUNT III

(failure to document equipment complies with recognized and generally accepted good engineering practices)

28. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

29. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with recognized and generally accepted good engineering practices ("RGAGEP").

30. The American National Standards Institute (ANSI) and American Society of Mechanical Engineers (ASME) standard no. A13.1.2007 "Standard for the Identification of Pipes" and the International Institute of Ammonia Refrigeration ("IIAR") Bulletin 114 (2014) "Guidelines for Identification of Ammonia Refrigeration Piping and System Components," specify requirements for the labeling and other identification of ammonia refrigeration system piping and other componentry.

31. ANSI/IIAR 2 "Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems", Section 6.15.3 Restricted Access Signage, which requires that access to the refrigerating machinery room shall be restricted to authorized personnel and that doors be clearly marked or permanent signs shall be posted at each entrance to indicate this restriction.

32. ANSI/IIAR 2, Section 11.3.6 Atmospheric Discharge, requires pressure relief valves to be connected to piping to route relieved anhydrous ammonia above roof level.

33. Based on EPA's inspection and information gathered during EPA's investigation, process piping and equipment was inadequately labeled.

34. Based on EPA's inspection and information gathered during EPA's investigation, the entry to the facility's engine room was not marked to limit entry to only authorized personnel.

35. Based on EPA's inspection and information gathered during EPA's investigation, the facilities pressure relief valves on the high-pressure receiver were observed to be disconnected from the piping which were intended to route any relieved anhydrous ammonia out of the engine room and up above roof level.

36. By failing to label process piping and equipment throughout its system, by failing to properly mark the entry door to the engine room to limit access to authorized personnel, and by failing to properly connect pressure relief valves to the high pressure receiver Respondent failed to document that process equipment complies with recognized and generally accepted good engineering practices, and therefore Respondent violated 40 CFR § 68.65(d)(2).

COUNT IV

(failure to comply with process hazard assessment requirements)

37. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

38. 40 C.F.R. § 68.67(e) requires that owners and operators shall establish a system to promptly address the team's findings and recommendations, assure that the recommendations are resolved in a timely manner and that the resolution is documented.

39. 40 C.F.R. § 68.67(f) requires that after the completion of the initial process hazard analysis ("PHA"), the PHA must be updated and revalidated at least every five years by a team with expertise in engineering and process operations.

40. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to complete action items identified in PHAs as soon as possible, and that findings and recommended action items from Respondent's July 27, 2016 PHA Revalidation, May 12, 2009 PHA Revalidation, and 2004 PHA showed either completion of the items several years after the assigned target completion dates or remained open past target completion dates without supporting explanation. Eleven action items remain and are expected to be completed in 2019.

41. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not update and revalidate its PHA at least every five years in that the 2016 PHA Revalidation was conducted over seven years after the previous May 2009 PHA.

42. By failing to complete action items identified in the PHAs as soon as possible, as well as failing to update and revalidate its PHAs at least every five years, Respondent has violated 40 C.F.R. § 68.67 (e) and (f).

COUNT V
(failure to comply with mechanical integrity requirements)

43. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

44. 40 C.F.R. § 68.73(d) requires that inspections and tests be performed on process equipment, that the inspection and testing procedures follow recognized and generally accepted good engineering practices, and that the frequency of inspections and tests of process equipment be consistent with applicable manufacturer's recommendations and good engineering practices. This section also requires owners and operators to document each inspection and test that has been performed on any process equipment.

45. During EPA's inspection of its facility, Respondent could not provide documentation that the frequency of its inspections and tests of process equipment were consistent with applicable

manufacturer's recommendations and good engineering practices. Further, "Action Item #13" listed on Respondent's 2016 Compliance Audit stated that, "Recent documentation for weekly, monthly and annual [Mechanical Integrity Assessment Report ("MI")] inspection is lacking. Ensure to develop and implement a MI inspection schedule to inspect the covered ammonia refrigeration processes according to the industry standard (IIAR Bulletin 109 and 110)." This item was listed as open at the time of the inspection. Some inspections were conducted in 2017 with recommendations completed.

46. By failing to ensure that the frequency of inspections and tests completed on process equipment be consistent with applicable manufacturer's recommendations and good engineering practices, Respondent has violated 40 C.F.R. 68.73(d).

COUNT VI
(failure to comply with mechanical integrity requirements)

47. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

48. 40 C.F.R. § 68.73(e) requires owners and operators to correct deficiencies in equipment that are outside acceptable limits as defined by the process safety information in 40 C.F.R. § 68.65 before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

49. EPA determined during its inspection that Respondent did not correct deficiencies prior to use and in a timely manner. For instance, Action item #13 from the 2016 Compliance Audit reported that "(t)he Relief System Design information lists two pressure vessels (LTV 1 & LTV 2) that have 'No Pressure Relief Valve Installed'. Install pressure relief valves to protect from over-pressurization in accordance with IIAR." This action item was marked as remaining open in a

subsequent document provided to EPA. Further, 58 recommendations from a 2009 MI audit were missing due dates, and no status comments were provided.

50. By failing to correct deficiencies prior to use and in a timely manner, Respondents have violated 40 C.F.R. § 68.73(e).

COUNT VII
(failure to conduct compliance audit requirements)

51. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

52. 40 C.F.R. § 68.79(a) requires that owners and operators certify that they have evaluated compliance with the provisions of the "Program 3 Prevention Program" at least every three years to verify that procedures and practices developed under the program are adequate and are being followed.

53. EPA determined that Respondent did not complete a compliance audit every three years. The Facility's three-year September 30, 2016 Compliance Audit was conducted over four years after the date of the previous May 2012 Compliance Audit.

54. By failing to conduct compliance audits at least every three years, Respondent has violated 40 C.F.R. § 68.79(a)

COUNT VIII
(failure to comply with compliance audit requirements)

55. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

56. 40 C.F.R. § 68.79(d) requires owners or operators to promptly determine and document an appropriate response to each of the findings of its compliance audit, and to documents that deficiencies have been corrected.

57. EPA determined during its inspection that numerous recommendations listed on Respondent's 2016 compliance audit remained open, and that two recommendations listed on its 2012 compliance audit were completed several years after the audit was conducted.

58. By failing to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, Respondent violated 40 C.F.R. § 68.79(d).

COUNT IX
(failure to comply with emergency response requirements)

59. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

60. 40 C.F.R. §§ 68.90(b)(3) require that appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

61. EPA's inspection of Respondent's facility showed that the facility's emergency action plan, dated February 12, 2013 (revised January 20, 2016) did not include the phone number for National Response Center ("NRC").

62. By failing to include NRC's phone number in the facility's emergency action plan, Respondent violated 40 C.F.R. § 68.90(b)(3).

D. CIVIL PENALTY

63. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **EIGHTY THOUSAND DOLLARS ($80,000.00)**, as the civil penalty for the violations alleged herein.

64. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, all as adjusted by the Debt Collection Improvement Act of 1996, see 40 CFR Part 19, authorize civil penalties of up to thirty-seven

thousand five hundred dollars ($37,500) per day for each day a violation of Section 112(r) of the CAA, Section 304 of EPCRA, or Section 103 of CERCLA occurs on or after January 13, 2009, up to $44,539 per day for each day a violation of Section 112(r) of the CAA occurs on or after November 2, 2015, and up to $53,907 per day for each day a violation of Section 304 of EPCRA or Section 103 of CERCLA occurs on or after November 2, 2015. See Tables 1 & 2 of 40 CFR § 19.4.

E. ADMISSIONS AND WAIVERS OF RIGHTS

65. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

66. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

67. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

68. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I), the SEP has been completed, and any delays in performance and/or stipulated penalties have been resolved.

69. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

70. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

71. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent.

G. PAYMENT OF CIVIL PENALTY

72. Respondent consents to the assessment of and agrees to pay civil penalties of **EIGHTY THOUSAND DOLLARS ($80,000.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

73. Respondent shall pay the civil penalty within sixty (60) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO having been approved and issued by the Regional Judicial Officer is filed with the Regional Hearing Clerk.

74. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this

action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency

Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pav.gov
Enter "sfol.l" in the search field
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

And

Don Nixon
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

75. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

76. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

H. SUPPLEMENTAL ENVIRONMENTAL PROJECT

77. As a condition of settlement, Respondent shall perform the supplemental environmental project ("SEP") specified in this Section. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements. The SEP includes the following upgrades:

(1) Liquid Recirculator Pump: Install two Teikoku Can Pumps. The canned motor pumps shall employ a structure in which the pump and motor are integrated and the liquid transported is sealed inside.

(2) Control system: Install a new control system with liquid valve automation that controls the existing liquid solenoid valves, including the King Valve piping and allows for remote shut off of the valves to the system.

78. The SEP upgrades will have the following environmental and safety benefits: reduce potential leaks of hazardous material at the valve seals on the Liquid Recirculator Pump, as well as reduces maintenance relating to seal replacement. Further, the new control system allows for remote shut off of valves as well as closer monitoring and notification of potential releases, the lack of which contributed to the size of an ammonia release on December 15, 2016. The upgrades specified in this SEP are not required by 40 C.F.R. Part 68 or currently reflected in RAGAGEP references.

79. Respondent shall expend at least ONE HUNDRED NINE THOUSAND FOUR HUNDRED NINETY-NINE DOLLARS ($109,499.00) to complete the SEPs described herein.

80. Respondent shall complete the SEPs within twelve (12) months of the Effective Date of this CA/FO. Within ninety days (90) days of completion of the tasks outlined in paragraph 77, above, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report

shall contain the following information: (i) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to (i) invoices, purchase orders, checks or receipts, and correspondence with its contractor; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the SEP; and (iii) certification that the projects have been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

81. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The Final SEP Completion Report shall be submitted via hard copy or electronic mail to:

Don Nixon
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Nixon.donald@epa.gov

82. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section I.

83. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least ONE HUNDRED NINE THOUSAND FOUR HUNDRED NINETY-NINE DOLLARS ($109,499.00); (ii) that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (iii) that the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Agreement; (iv) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (v) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (vi) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and (vii) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this Agreement.

84. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of Respondent's execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

85. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS ($500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS ($1,000) per day for the sixteenth to

thirtieth day of delay, and FIVE THOUSAND DOLLARS ($5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

86. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of ONE HUNDRED NINE THOUSAND FOUR HUNDRED NINETY-NINE DOLLARS ($109,499.00) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 92.

87. If Respondent demonstrates that the SEP tasks described in Section H were completed, but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Section H, Respondent shall pay a stipulated penalty to the United States that is the difference between ONE HUNDRED NINE THOUSAND FOUR HUNDRED NINETY-NINE DOLLARS ($109,499.00) and the actual costs incurred by Respondent toward completion of the tasks described in Section H.

88. If Respondent fails to demonstrate that the SEP tasks in Section H were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks; and (ii) certifies, with supporting documentation, that at least 90 percent of the costs that were required to be incurred pursuant to Section I were incurred for the SEP tasks described in Section H, Respondent shall not be liable for any stipulated penalty under Section I.

89. For failure to submit the SEP Completion Report required by Section H, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS ($500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and

shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed of ONE HUNDRED NINE THOUSAND FOUR HUNDRED NINETY-NINE DOLLARS ($109,499.00).

90. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of this CA/FO.

91. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

92. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

93. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

94. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO,

including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory or common law enforcement authority of the United States.

95. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

96. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

97. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

98. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

99. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

100. Each party to this action shall bear its own costs and attorneys' fees.

101. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

102. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent Del Monte Fresh Produce (West Coast), Inc.

DATE: March 27, 2019

BY: _____
Name: Eduardo Bezerra
Title: Sr Vice President & CFO

United States Environmental Protection Agency, Region 9

DATE: 5/7/19

BY: _____
~~Enrique Manzanilla~~ AMY C. MILLER
Director, ~~Superfund Division~~ ENFORCEMENT AND COMPLIANCE ASSURANCE DIVISION

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA (112r)-09-2019-0030) be entered and that Respondent pay a civil penalty EIGHTY THOUSAND DOLLARS ($80,000) due within sixty (60) days from the Effective Date of this CA/FO, and implement the Supplemental Environmental Project described in Section H of this CA/FO, in accordance with all terms and conditions of this CA/FO.

05/17/19
Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Del Monte Fresh Produce (West Coast), Inc.* (CAA(112r)-09-2019-0030), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Mr. Edwardo Bezerra
Senior Vice President and CFO
Del Monte Fresh Produce (West Coast), Inc.
c/o Zoltan Pinter
VP, Associate General Counsel Commercial Operations
Del Monte Fresh Produce Company
241 Sevilla Avenue
Coral Gables, Florida 33134

HAND DELIVERED:

Complainant - Myles Saron, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Date: May 17, 2019

Steven Armsey
Regional Hearing Clerk
EPA, Region 9