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Regional Counsel
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U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	Docket No. CWA-09-2012-0002
)	
)	CONSENT AGREEMENT AND
Nor-Cal Products, Inc.)	FINAL ORDER PURSUANT TO
Yreka, California)	40 C.F.R. §§ 22.13 AND 22.18
1967 South Oregon Street)	
Yreka, California 96097)	
)	Proceeding for Class I Civil Administrative
Respondent)	Penalty under § 309(g) of the Clean Water Act

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”) Region IX, and Nor-Cal Products, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

A. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 22 (“Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits”) for the assessment of a penalty against Respondent for a violation of CWA Section 307(d), 33 U.S.C. § 1317(d).

2. Complainant is the Director of Water Division, EPA Region IX, who brings this action pursuant to authority delegated by the Administrator of EPA and the Regional Administrator of EPA Region IX.
3. Respondent is a corporation that owns and operates the facility located at 1967 South Oregon Street, Yreka, California 96097, which manufactures stainless steel components for vacuum pumps and compressors. As a result, the facility generates process wastewater that it discharges to the City of Yreka's sanitary sewer system.
4. This CAFO, which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) .

B. STATUTORY AND REGULATORY BASIS

5. CWA section 307, 33 U.S.C. § 1317, establishes the federal pretreatment program for regulating the introduction of wastewater from non-domestic sources into a publicly owned treatment works ("POTW").
6. CWA Section 307(d), 33 U.S.C. § 1317(d), prohibits any owner or operator of any source from introducing pollutants into POTWs in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307 of the CWA.
7. "Person" includes any corporation under CWA Section 502(5), 33 U.S.C. § 1362(5).
8. "Pollutant" includes "chemical wastes" and "industrial waste" under CWA Section 502(6), 33 U.S.C. § 1362(6).
9. Pursuant to CWA section 307(b), EPA promulgated "General Pretreatment Regulations for Existing and New Sources of Pollution" at 40 C.F.R. Part 403.

10. Under 40 C.F.R. § 403.3(j), the term “industrial user” means a source of “indirect discharge,” which is in turn defined by 40 C.F.R. § 403.3(i) as the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA, 33 U.S.C. § 1317(b), (c) or (d).
11. The General Pretreatment Regulations at 40 C.F.R. § 403.6 include national standards specifying quantities or concentrations of pollutants that may be discharged to a POTW by existing or new industrial users in specific industrial subcategories. Specifically, Respondent’s facility is subject to the federal categorical pretreatment standards for metal finishing operations under 40 C.F.R. Part 433 and the discharge limits for new sources at 40 C.F.R. § 433.17.
12. The national pretreatment standards in 40 C.F.R. § 403.12(e) for non-domestic dischargers into POTWs require categorical industrial users to submit, at least twice per year, periodic reports of sampling that is representative of the discharge to the sewers and indicate both the concentration of the discharge for all federally-regulated parameters and the flow rate of the discharge.

C. FACTUAL BACKGROUND

13. Respondent is a corporation and, therefore, a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5). Respondent is a non-domestic wastewater source that introduces pollutants within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), into the City of Yreka sanitary sewer system and its treatment works, which is a POTW within the meaning of Section 307(b) of the CWA and the pretreatment regulation in 40 C.F.R. § 403.3(q). Respondent is also an “Industrial User”

or “IU” as that term is defined at 40 C.F.R. 403.3(j). Therefore, Respondent is subject to the provisions of the CWA Section 307, 33 U.S.C. § 1317.

14. On December 31, 2010, Respondent purchased all of the stock of Nor-Cal and the Yreka, California facility.
15. Upon the change of ownership, Respondent completed an environmental self-evaluation of its Yreka facility. Respondent voluntarily disclosed potential violations of the pretreatment standards in a letter to EPA Region IX dated March 18, 2011. In that letter, Respondent requested application of EPA's Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (known as the “Audit Policy”) (65 FR 19618, April 11, 2000) and the Interim Approach to Applying the Audit Policy to New Owners (“New Owners Policy”) (73 FR 44991, August 1, 2008).
16. Respondent supplemented its voluntary disclosure with a letter dated May 20, 2011 that described compliance with the nine conditions of the Audit Policy, as modified by the New Owners Policy. EPA conducted an independent analysis based on this information and found compliance with the policies.
17. On October 31, 2011, Respondent submitted a baseline monitoring report to the Control Authority (here, the California Regional Water Quality Control Board, North Coast Region). Respondent’s subsequent monitoring demonstrates compliance with the federal categorical pretreatment standards for metal finishing operations under 40 C.F.R. Part 433 and the discharge limits for new sources at 40 C.F.R. § 433.17.

D. ALLEGED VIOLATION

18. Under EPA's New Owners Policy, EPA will not pursue penalties for violations that occurred prior to the new owner's date of purchase. 73 FR at 44998. Therefore, Respondent's period of violation began after December 31, 2010.
19. Under 40 C.F.R. § 403.12(e), facilities subject to the pretreatment standards must monitor and analyze their discharges to demonstrate compliance with the standards and report this information to the Control Authority in the months of June and December (biannually). Respondent failed to comply with the monitoring and reporting requirements in 40 C.F.R. § 403.12(e) because it did not submit periodic monitoring reports to the Control Authority until October 31, 2011.
20. Upon purchase of the facility in December 31, 2010, Respondent should have conducted adequate monitoring of its discharges and reported this information in June 2011, which it failed to do. Thus, there was a single monitoring/reporting violation at Respondent's Yreka facility for the month of June 2011.

E. RESPONDENT'S ADMISSIONS AND WAIVERS

21. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific alleged violations contained in Section I.D. above; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.F. below; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the Final Order contained in Section II. of this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

22. In settlement of the CWA violation specifically alleged in Section I.D. above, Respondent shall pay to the United States a civil administrative penalty in the amount of ONE THOUSAND AND EIGHTEEN DOLLARS (**\$1,018.00**). Respondent shall pay this penalty within thirty (30) calendar days of the effective date of this CAFO. The date by which payment must be received by the United States shall be the “due date” for the payment. Respondent shall make payment by cashier’s or certified check payable to the “Treasurer, United States of America,” and shall send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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

Respondent shall accompany its payment with a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Bryan K. Goodwin, Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

Marcela von Vacano, Office of the Regional Counsel (ORC-2)
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

23. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.
24. If the penalty identified above is overdue, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 22 above.
25. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA Region IX may request the Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the date of the final order. In such an action, the validity, amount, and appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay

persists. EPA Region IX may also take other debt collection actions as authorized by law, such as the Federal Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

G. RETENTION OF RIGHTS

26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.D. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.D. above; or (ii) any criminal liability. EPA reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.D. above.
27. This CAFO is not a permit or a modification of any permit. This CAFO shall not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits, including but not limited to any CWA requirements, permits or orders.

H. ATTORNEYS' FEES AND COSTS

28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE AND TERMINATION DATES

29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order, having been signed by the Regional Judicial Officer, is

filed with the Regional Hearing Clerk, and shall terminate when Respondent has complied with this CAFO in full.

J. BINDING EFFECT

30. The undersigned representative of each party certifies that he or she is fully authorized to execute and legally bind that party to this CAFO.

31. This CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Changes in ownership, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's status or responsibilities under this CAFO.

K. PUBLIC NOTICE

32. EPA Region IX's consent to this Consent Agreement is subject to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require public notice of, and a reasonable opportunity for comment on, the Consent Agreement. In the case of a proceeding proposed to be commenced pursuant to 40 C.F.R. § 22.13(b), such as this one, the comment period shall be "no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice." 40 C.F.R. § 22.45(b)(1). EPA Region IX reserves the right to withdraw from or withhold the consent if public comments disclose material information that was not considered by EPA Region IX in entering into this Consent Agreement. In such case, Respondent's obligations under this document shall terminate, and EPA Region IX may pursue any and all enforcement options as provided by law. If no comment is received during the

comment period regarding the Consent Agreement, EPA Region IX shall file the Final Order.

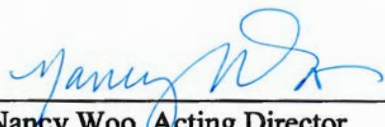
CONSENTING PARTIES:

For Nor-Cal Products, Inc.:

BY: 
Tom Deany, Chief Executive Officer
Nor-Cal Products, Inc.
1967 South Oregon Street
Yreka, CA 96097

DATE: August 6, 2012

For the U.S. Environmental Protection Agency Region IX:

BY: 
Nancy Woo, Acting Director
Water Division
75 Hawthorne Street
San Francisco, CA 94105

DATE:

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18, U.S. EPA Docket No. CWA-09-2012-0002, be entered and that Respondent, Nor-Cal Products, Inc. pay a civil penalty of **\$1,018.00**. Payment shall be made pursuant to paragraph 22 of the CAFO within thirty (30) days of the Effective Date.

This Final Order shall be effective immediately.

Date

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency Region IX