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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

Civil No. 1:15-cv-01900-AWI-SKO

15 Plaintiff,

CONSENT DECREE

16 v.

17 GIBSON WINE CO.,

18 Defendant.
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1 WHEREAS, Plaintiff United States of America, on behalf of the United States
2 Environmental Protection Agency (“EPA”), filed the original complaint against Defendant
3 Gibson Wine Company (“Defendant”) on December 19, 2015, alleging claims under Section
4 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1) (“CAA Section 112(r)(1)”), Section 103
5 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.
6 § 9603 (“CERCLA Section 103”), and Section 304 and of the Emergency Planning and
7 Community Right-To-Know Act, 42 U.S.C. § 11004 (“EPCRA Section 304”), with respect to
8 Defendant’s winemaking facility located at 1720 Academy Avenue, Sanger, California (“the
9 Facility”);

10 WHEREAS, on December 1, 2016, the United States filed an amended complaint adding
11 a claim under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7) (“CAA Section
12 112(r)(7)”), based on the same conduct as previously pleaded for violations of CAA Section
13 112(r)(1), that was prompted by additional information, learned through review of documents
14 produced by the Defendant, that the United States alleges supports the applicability of the
15 regulations at 40 C.F.R. Part 68;

16 WHEREAS, the claims asserted by the United States stem from a release of at least 284
17 pounds of anhydrous ammonia on September 11, 2012, at the Facility that resulted in the death
18 of a contract worker; anhydrous ammonia is a listed and regulated extremely hazardous
19 substance under Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. §
20 68.130; anhydrous ammonia is also a hazardous substance for purposes of Section 102 of
21 CERCLA, 42 U.S.C. § 9602, 40 C.F.R. § 302.4, Table 302.4, and for the purposes of Section
22 302 of EPCRA, 42 U.S.C. § 11002, 40 C.F.R. Part 355, Appendices A and B;

23 WHEREAS, Defendant admits that it is the owner and operator of a stationary source
24 (the Facility) handling anhydrous ammonia;

25 WHEREAS, the United States alleges that CAA Section 112(r)(1) imposes a general duty
26 of care on Defendant to identify hazards which may result from an accidental release of
27 anhydrous ammonia, to design and maintain a safe facility to prevent accidental releases, and to
28 minimize the consequences of any accidental release of anhydrous ammonia which does occur;

1 WHEREAS, the United States alleges claims under the notice provisions of CERCLA
2 Section 103 and EPCRA Section 304 for Defendant's failure to notify the National Response
3 Center until 37 hours after the Release and its failure to notify the California Office of
4 Emergency Services at all;

5 WHEREAS, Defendant answered the amended complaint on April 5, 2017, and
6 substantively denied the alleged violations;

7 WHEREAS, Defendant does not admit any liability to the United States arising out of the
8 transactions or occurrences alleged in the amended complaint;

9 WHEREAS, the United States has reviewed financial information submitted by
10 Defendant and determined that Defendant has a limited financial ability to pay the warranted
11 civil penalty;

12 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
13 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
14 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

15 NOW, THEREFORE, without the adjudication or admission of any issue of fact or law
16 except as provided in Section I below, in the Order Granting Motion to Strike Affirmative
17 Defenses, dated April 25, 2016 (ECF No. 21), and in the Order Denying Motion to Strike
18 Portions of First Amended Complaint, dated March 20, 2017 (ECF No. 54), and with the consent
19 of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

20 **I. JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over the subject matter of this action and the
22 Defendant, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 109(c) of
23 CERCLA, 42 U.S.C. § 9609(c), Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and
24 under 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this District under Section 113(b)
25 of the CAA, 42 U.S.C. § 7413(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Section
26 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a),
27 because the Defendant does business in, and these claims arose within, this judicial district. For
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1 purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's
2 jurisdiction over this Decree and over Defendant, and consents to venue in this judicial district.

3 2. For purposes of this Consent Decree, Defendant agrees that the amended
4 complaint states claims upon which relief may be granted pursuant to CAA Sections 112(r)(1)
5 and 112(r)(7), CERCLA Section 103, and EPCRA Section 304.

6 II. APPLICABILITY

7 3. The obligations of this Consent Decree apply to and are binding upon the United
8 States and upon Defendant and any successors, assigns, or other entities or persons otherwise
9 bound by law.

10 4. No transfer of ownership or operation of the Facility, whether in compliance with
11 the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure
12 that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer,
13 Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall
14 simultaneously provide written notice of the prospective transfer, together with a copy of the
15 proposed written agreement, to EPA Region IX, and the United States Department of Justice, in
16 accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the
17 Facility without complying with this Paragraph constitutes a violation of this Decree.

18 5. Defendant shall provide a copy of this Consent Decree to all officers, employees,
19 and agents whose duties might reasonably include compliance with any provision of this Consent
20 Decree, as well as to any contractor retained to perform work required under this Consent
21 Decree. Defendant shall condition any such contract upon performance of the work in
22 conformity with the terms of this Consent Decree.

23 6. In any action to enforce this Consent Decree, Defendant shall not raise as a
24 defense the failure by any of its officers, directors, employees, agents, or contractors to take any
25 actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in CAA Section 112(r)(1), Clean Air Act 112(r)(7), CERCLA Section 103, or EPCRA Section 304 (collectively referred to as “the Statutes”), or in regulations promulgated pursuant to the Statutes, shall have the meanings assigned to them in the Statute(s) or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Amended Complaint” shall mean the Amended Complaint filed by the United States on December 1, 2016, in this action;
- b. “Anhydrous Ammonia Refrigeration System” shall be all anhydrous ammonia refrigeration processes at the Facility, including all equipment comprising such systems including, but not limited to, condensers, compressors, receivers, chillers, valves, regulators, temperature and pressure gauges, pipes, and diffusion tanks;
- c. “Computer Control System” shall mean the computer control safety monitoring system for Gibson’s Anhydrous Ammonia Refrigeration System as set forth in Paragraphs 14-21 of this Consent Decree.
- d. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto, listed in Section XXV;
- e. “Continuous Operation” shall mean that the Computer Control System is turned on and functioning for its intended purpose any time that anhydrous ammonia is present in a process at the Facility;
- f. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- g. “Defendant” shall mean Gibson Wine Company;
- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

- 1 i. “Effective Date” shall have the meaning provided in Section XVII;
- 2 j. “Facility” shall mean Defendant’s winemaking facility located at 1720 Academy
3 Avenue, Sanger, California;
- 4 k. “Financial Information” shall mean all documents and information of, or related
5 to, Gibson’s financial condition provided to the United States by Gibson or its agents,
6 whether orally or in writing, before the date this Consent Decree has been signed by
7 Gibson;
- 8 l. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- 9 m. “Parties” shall mean the United States and Defendant;
- 10 n. “Section” shall mean a portion of this Decree identified by a roman numeral;
- 11 o. “United States” shall mean the United States of America, acting on behalf of
12 EPA.

13 **IV. CIVIL PENALTY**

- 14 8. Defendant shall pay the sum of \$330,000 as a civil penalty as follows:
- 15 a. At 90 Days from Entry, \$80,000 together with interest accruing on \$330,000 from
16 the date on which the Consent Decree is lodged with the Court, at the rate specified in
17 28 U.S.C. § 1961 as of the date of lodging;
- 18 b. At 365 Days from Entry, \$90,000 together with interest accruing on \$250,000
19 from due date for the payment required by Paragraph 8.a of this Consent Decree, at the
20 rate specified in 28 U.S.C. § 1961 as of the date of lodging;
- 21 c. At 548 Days from Entry, \$80,000 together with interest accruing on \$160,000
22 from due date for the payment required by Paragraph 8.b of this Consent Decree at the
23 rate specified in 28 U.S.C. § 1961 as of the date of lodging;
- 24 d. At 730 Days from Entry, \$80,000 together with interest accruing on \$80,000 from
25 due date for the payment required by Paragraph 8.c of this Consent Decree, at the rate
26 specified in 28 U.S.C. § 1961 as of the date of lodging.
- 27 e. If Defendant fails to make any installment payment required by Paragraphs 8.a-
28 8.c by the required due date, all remaining installment payments and all accrued interest

1 shall become due immediately upon such failure.

2 9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer
3 (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to
4 Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for
5 the Eastern District of California after the Effective Date. The payment instructions provided by
6 the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which
7 Defendant shall use to identify all payments required to be made in accordance with this Consent
8 Decree. The FLU will provide the payment instructions to:

9 Eddie Wayne Albrecht, General Manager
10 Gibson Wine Company
11 1720 Academy Avenue
12 Sanger, CA 93657
13 (559) 875-2505 – Main
(559) 531-1407 – Direct
walbrecht@gibsonwine.com

14 on behalf of Defendant. Defendant may change the individual to receive payment instructions
15 on its behalf by providing written notice of such change to the United States and EPA in
16 accordance with Section XV (Notices).

17 10. At the time of each payment, Defendant shall send notice that payment has been
18 made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA
19 Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the
20 United States via email or regular mail in accordance with Section XV; and (iii) to EPA via
21 email in accordance with Section XV. Such notice shall state that the payment is for the civil
22 penalty owed pursuant to the Consent Decree in *United States of America v. Gibson Wine Co.*,
23 *Case No. 1:15-cv-01900-AWI-SKO* and shall reference the civil action number, CDCS Number
24 and DOJ case number 90-11-3-11058.

25 11. Defendant shall not deduct any penalties paid under this Decree pursuant to this
26 Section or Section IX (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

12. Until Termination (Section XX of this Consent Decree), Defendant shall comply with all applicable requirements of the Statutes, including the regulations under 40 C.F.R. Part 68, and with the California Accidental Release Prevention (“CalARP”) Program, California Health and Safety Code Chapter 6.95, Article 2, Sections 25531-25543.3 and Title 19, Division 2, Chapter 4.5, Sections 2735-2785 of the California Code of Regulations.

A. Installation and Operation of Anhydrous Ammonia Refrigeration System Computer Control System.

13. No later than 365 days from the Effective Date, Defendant shall complete installation and commence Continuous Operation of a computer control system for its Anhydrous Ammonia Refrigeration System as set forth in Paragraphs 14-21 of this Consent Decree (the “Computer Control System”). The Computer Control System shall be in Continuous Operation through the date of Termination (Section XX) of this Consent Decree.

14. The Computer Control System shall consist of the computer hardware, software and programming, and all components and equipment necessary to achieve the control of the Anhydrous Ammonia Refrigeration System pursuant to the specifications as described herein at Paragraphs 14-21, and substantially consistent with pertinent portions of the statement of work attached as Appendix A to this Consent Decree.

15. The Computer Control System shall be connected to any and all anhydrous ammonia refrigeration equipment at the Facility, to include any condensers, compressors, receivers, chillers, valves, regulators, and temperature and pressure gauges in use at the Facility.

16. The Computer Control System shall have at least the following components and functionality employed at all times of operation of the anhydrous ammonia refrigeration system:

- a. Remote viewing and control of the entire anhydrous ammonia refrigeration system, including changing set points, calibrating temperature and pressure, automated and remote temperature control, and automated and remote control of pressure regulators and/or motorized control valves to prevent a chiller from freezing;
- b. Automated alerts and alarms, both at the Facility and remotely, when parameters

1 for safe operation are exceeded;

2 c. Automated shut-off of the ammonia feed to areas where either a release of
3 anhydrous ammonia or a loss of pressure is detected;

4 d. An uninterruptable power supply in case of power outage and to protect against
5 power surges, which includes, but is not limited to, battery back-up;

6 e. Programming to resume computer control following any manual override option,
7 such that the Computer Control System will resume operation after one hour of having
8 had a manual override triggered;

9 f. An emergency refrigeration break-glass switch for emergency shutdown of
10 ammonia refrigeration equipment, in accordance with the California Mechanical Code.
11 The break-glass switch will be wired to the ammonia refrigeration system in such a way
12 as to allow cutting all power to ammonia refrigeration equipment.

13 g. An ammonia sensor and alarm system for each refrigeration process at the
14 Facility, which shall include:

- 15 (1) A gas detection system for continuous monitoring of ammonia gas at
16 levels of 0 to 500 ppm, with a means of reading the gas levels remotely in
17 a location accessible to first responders;
- 18 (2) A local horn or horns that shall be audible throughout the Facility and
19 strobe alerts visible in all areas of the Facility that shall be triggered for
20 any detected anhydrous ammonia leak of at least 50 ppm;
- 21 (3) Automated remote notification to off-site personnel via email, text
22 message, or other appropriate means; and,
- 21 (4) Tie-in to the computer system to provide for automatic shutdown of
22 affected equipment.

23 h. The software shall maintain time versus temperature graphs, expandable from five
24 minutes to fourteen days, providing a history for daily monitoring and troubleshooting.

25 17. Defendant shall assure technicians who operate and maintain the Anhydrous
26 Ammonia Refrigeration System are qualified with refrigeration system engineering training to
27 safely perform assigned tasks, including sufficient knowledge to interpret and apply reports
28 generated by the Computer Control System. Prior to commencing Continuous Operation of the

1 Computer Control System, Defendant shall specifically authorize technicians who are qualified
2 to operate and maintain the Anhydrous Ammonia Refrigeration System using the Computer
3 Control System.

4 18. Within 90 days of completion of installation of the Computer Control System,
5 Defendant shall prepare a schematic or diagram reflecting the new system that illustrates the
6 locations of critical shut-off valves. This schematic or diagram shall be incorporated into
7 Defendant's Emergency Response (or Action) Plan and shall be kept readily accessible to first
8 responders.

9 19. Within 30 days of completion of installation of the Computer Control System but
10 prior to its being placed into Continuous Operation, Defendant shall train all employees and
11 contract workers at the Facility in the new instructions for reacting to the various types of alerts
12 and alarms produced by the Computer Control System. Within 90 days of completion of
13 installation of the Computer Control System, Defendant's Emergency Response (or Action) Plan
14 shall be updated to provide instructions for how to react to such alerts and alarms.

15 20. Defendant shall follow and implement its management of change procedures, in
16 compliance with applicable CalARP requirements, with respect to the design, installation,
17 operation of and future changes to the Computer Control System. Defendant shall also ensure
18 that system Piping and Instrumentation Diagrams, maximum intended inventory calculations,
19 and relief system calculations are updated accordingly.

20 21. Defendant shall ensure that the Computer Control System is in material
21 compliance with relevant industry standards.

22 **B. Refrigeration Equipment Compliance Corrections**

23 22. Labeling and Tagging Refrigeration Equipment: Within 90 days of the Effective
24 Date, Defendant shall ensure that all equipment, piping, and valves that are part of the Facility's
25 Anhydrous Ammonia Refrigeration System are labeled, tagged, or otherwise identified
26 consistent with the International Institute of Ammonia Refrigeration ("IIAR") Bulletin 114
27 (March 2014) and reflect the Facility's current piping and instrument diagrams. At a minimum,
28

1 such labeling and tagging shall be completed for any outstanding items identified in any
2 inspection report prepared for Gibson by any of its contractors.

3 23. Replacing Refrigeration Gauges and Monitors: Within 90 days of the Effective
4 Date, Gibson shall replace any broken or defective pressure or temperature gauges and monitors
5 that will not otherwise be replaced as part of the Computer Control System project required by
6 Paragraphs 13-21 of this Consent Decree.

7 24. Completing a Mechanical Integrity Audit: Within 120 days of the Effective Date,
8 Defendant shall notify EPA, in writing, of the name, address, and telephone number of the
9 contractor selected to perform a Mechanical Integrity Audit of its anhydrous ammonia
10 refrigeration equipment, subject to the review and approval of EPA. The contractor shall have
11 the technical expertise sufficient to comply with the applicable requirements of this Consent
12 Decree.

13 25. Within 180 days of the Effective Date, Defendant's qualified contractor shall
14 complete a Mechanical Integrity Audit of Defendant's anhydrous ammonia refrigeration
15 equipment, consistent with IIAR Bulletin No. 109, Section 5.3, and IIAR Bulletin No. 110,
16 Section 6.4.4. Within 30 days of completing this Mechanical Integrity Audit, Gibson shall
17 submit to EPA a Mechanical Integrity Audit report that summarizes the audit; identifies the
18 Anhydrous Ammonia Refrigeration System's conformance with accepted industry safety
19 standards and governing codes, system deficiencies jeopardizing the safety of operating and
20 other personnel, and operability and maintenance issues diminishing the useful life of the
21 equipment; and sets forth recommendations for correcting deficiencies in order to mitigate or
22 prevent accidental releases of anhydrous ammonia, with citations to the requirements or
23 standards applicable to such deficiencies. All such recommendations shall be implemented
24 within 730 days from the Effective Date, in the order of priority identified through the audit.

25 26. Relocating Process 2 King Valve: Within 365 days of the Effective Date, the king
26 valve for Process 2 shall be moved to the location described in the statement of work attached as
27 Appendix A to this Consent Decree at the section titled "Relocate Process #2 King Valve," and
28

1 as depicted in the picture therein, a readily accessible place where it would not be difficult to
2 stop the flow of ammonia in an emergency.

3 27. Relocating Process 1 Equipment: Within 730 days of the Effective Date,
4 Defendant shall relocate the Chiller 11 and Chiller 13 anhydrous ammonia refrigeration system
5 and all connected ammonia refrigeration equipment in Process 1, currently in the location near
6 the employee break room and rest rooms in Building One, to the area described in the statement
7 of work attached as Appendix A to this Consent Decree at the section titled “Relocate Chillers
8 #11 & #13.” Defendant shall follow and implement its management of changes procedures, in
9 compliance with applicable CalARP requirements, with respect to the relocation of Process 1.
10 Defendant shall also ensure that its Piping and Instrumentation Diagrams, maximum intended
11 inventory calculations, and relief system calculations are updated accordingly.

12 28. Correcting Written Standard Operating Procedures: Appendix B to this Consent
13 Decree identifies deficiencies in Defendant’s written “short form” standard operating procedures
14 (“SOPs”). In addition to the specific deficiencies identified in Appendix B, the identified SOPs
15 do not specify corrective actions required if conditions are outside appropriate limits. This
16 omission is contrary to the recommendation in IIAR 7 (2013) at Section 6.2.1.1 and CalARP
17 regulations 19 CCR §§ 2755.3(b)(7) and 2760.3(a)(2). Within 365 days of the Effective Date,
18 Defendant shall submit to the EPA, for its review and approval, proposed corrections consistent
19 with IIAR 7 (2013), “American National Standard for Developing Operating Procedures for
20 Closed-Circuit Ammonia Mechanical Refrigerating Systems,” and applicable CalARP
21 requirements at 19 CCR §§ 2735-2785 to address the deficiencies identified in Appendix B; the
22 proposed corrections shall also include revisions to any SOPs, including SOPs not enumerated in
23 Appendix B, to include a cross-reference to any SOPs that identify required corrective actions to
24 be taken when relevant operating conditions are outside of appropriate limits to enable operators
25 to readily access such information. Upon approval by EPA, all such corrected SOPs shall
26 supersede prior versions.

VI. PERMITS

1
2 29. Where any compliance obligation under Section V requires Defendant to obtain a
3 federal, state, or local permit or approval, Defendant shall submit timely and complete
4 applications and take all other actions necessary to obtain all such permits or approvals.
5 Defendant may seek relief under the provisions of Section X (Force Majeure) for any delay in
6 the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining,
7 any permit or approval required to fulfill such obligation, if Defendant has submitted timely and
8 complete applications and has taken all other actions necessary to obtain all such permits or
9 approvals.

VII. REVIEW AND APPROVAL OF DELIVERABLES

10
11 30. After review of any plan, report, or other item that is required to be submitted
12 pursuant to this Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve
13 the submission upon specified conditions; (c) approve part of the submission and disapprove the
14 remainder; or (d) disapprove the submission.

15 31. If the submission is approved pursuant to Paragraph 30, Defendant shall take all
16 actions required by the plan, report, or other document, in accordance with the schedules and
17 requirements of the plan, report, or other document, as approved. If the submission is
18 conditionally approved or approved only in part pursuant to Paragraph 30(b) or (c), Defendant
19 shall, upon written direction from EPA take all actions required by the approved plan, report, or
20 other item that EPA determines are technically severable from any disapproved portions, subject
21 to Defendant's right to dispute only the specified conditions or the disapproved portions, under
22 Section XI (Dispute Resolution).

23 32. If the submission is disapproved in whole or in part pursuant to Paragraph 30(c)
24 or (d), Defendant shall, within 45 days or such other time as the Parties agree to in writing,
25 correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion
26 thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is
27 approved in whole or in part, Defendant shall proceed in accordance with the preceding
28 Paragraph.

1 amendment to the report, including a full explanation of the cause of the violation, within 30
2 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this
3 Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice
4 required by Section X (Force Majeure).

5 37. Whenever any violation of this Consent Decree or any other event affecting
6 Defendant's performance under this Decree, or the performance of its Facility, may pose an
7 immediate threat to the public health or welfare or the environment, Defendant shall notify EPA
8 orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours
9 after Defendant first knew of the violation or event. This procedure is in addition to the
10 requirements set forth in the preceding Paragraph and the reporting requirements of CERCLA
11 Section 103 and EPCRA Section 304 or of any other law.

12 38. All reports shall be submitted to the persons designated in Section XV (Notices).

13 39. Each report submitted by Defendant under this Section shall be signed by an
14 official of the submitting party and include the following certification:

15 I certify under penalty of law that this document and all attachments were prepared under
16 my direction or supervision in accordance with a system designed to assure that qualified
17 personnel properly gather and evaluate the information submitted. Based on my inquiry
18 of the person or persons who manage the system, or those persons directly responsible for
19 gathering the information, the information submitted is, to the best of my knowledge and
20 belief, true, accurate, and complete. I have no personal knowledge that the information
submitted is other than true, accurate, and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of fine and
imprisonment for knowing violations.

21 40. This certification requirement does not apply to emergency or similar
22 notifications where compliance would be impractical.

23 41. The reporting requirements of this Consent Decree do not relieve Defendant of
24 any reporting obligations required by the Act or implementing regulations, or by any other
25 federal, state, or local law, regulation, permit, or other requirement.

26 42. Any information provided pursuant to this Consent Decree may be used by the
27 United States in any proceeding to enforce the provisions of this Consent Decree and as
28 otherwise permitted by law.

IX. STIPULATED PENALTIES

43. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 1 below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

Table 1

Consent Decree Violation	Stipulated Penalty
a. Failure to pay the civil penalty in the amounts required and on the dates specified in Paragraphs 8.a-d of this Consent Decree.	\$1,000 for each Day.
b. Failure to complete installation, and commence continuous operation, of the Computer Control System project required by Paragraphs 13-21 within 365 days of the Effective Date of this Consent Decree.	\$500 1st through 14th day; \$1,000 15th through 30th day; \$1,500 31st day and beyond.
c. Failure to: <ul style="list-style-type: none"> • Complete labeling and tagging of anhydrous ammonia refrigeration system required by Paragraph 22 within 90 days of the Effective Date of this Consent Decree. • Replace broken or defective pressure or temperature gauges and monitors required by Paragraph 23 within 90 days of the Effective Date of this Consent Decree. • Relocate Process 2 king valve required by Paragraph 26 within 365 days of the Effective Date of this Consent Decree 	For each violation: \$100 1st through 14th day; \$250 15th through 30th day; \$500 31st day and beyond.

<p>d. Failure to:</p> <ul style="list-style-type: none"> • Have a Mechanical Integrity Audit completed as required by Paragraphs 24 and 25 within 180 days of the Effective Date of this Consent Decree. • Implement all recommendations made in Mechanical Integrity Audit Report within 730 days of the Effective Date, as required by Paragraph 25 of this Consent Decree. 	<p>For each violation: \$500 1st through 14th day; \$1,000 15th through 30th day; \$1,500 31st day and beyond.</p>
<p>e. Failure to relocate Chiller 11 and 13 process equipment within 730 days of the Effective Date, as required by Paragraph 27 of this Consent Decree.</p>	<p>\$500 1st through 14th day; \$1,000 15th through 30th day; \$1,500 31st day and beyond.</p>
<p>f. Failure to submit to EPA revised written SOPs within 365 days of the Effective Date, as required by Paragraph 28 of this Consent Decree.</p>	<p>\$100 1st through 14th day; \$250 15th through 30th day; \$500 31st day and beyond.</p>
<p>g. Failure to timely submit, modify, or implement, as approved, a report, plan, study, analysis, protocol, or other submittal required by this Consent Decree.</p>	<p>\$250 for the 1st through 14th day; \$500 for the 15th through 30th day; \$750 for the 31st day and beyond.</p>
<p>h. Any violation of this Consent Decree not covered elsewhere in this Table 1.</p>	<p>\$500 for each Day for each violation.</p>

44. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

45. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

46. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

1 47. Stipulated penalties shall continue to accrue as provided in Paragraph 44, during
2 any Dispute Resolution, but need not be paid until the following:

3 a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that
4 is not appealed to the Court, Defendant shall pay accrued penalties determined to be
5 owing, together with interest, to the United States within 30 Days of the effective date of
6 the agreement or the receipt of EPA's decision or order.

7 b. If the dispute is appealed to the Court and the United States prevails in whole or
8 in part, Defendant shall pay all accrued penalties determined by the Court to be owing,
9 together with interest, within 60 Days of receiving the Court's decision or order, except
10 as provided in subparagraph c, below.

11 c. If any Party appeals the District Court's decision, Defendant shall pay all accrued
12 penalties determined to be owing, together with interest, within 15 Days of receiving the
13 final appellate court decision.

14 48. Defendant shall pay stipulated penalties owing to the United States in the manner
15 set forth and with the confirmation notices required by Paragraphs 9 and 10, except that the
16 transmittal letter shall state that the payment is for stipulated penalties and shall state for which
17 violation(s) the penalties are being paid.

18 49. If Defendant fails to pay stipulated penalties according to the terms of this
19 Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in
20 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall
21 be construed to limit the United States from seeking any remedy otherwise provided by law for
22 Defendant's failure to pay any stipulated penalties.

23 50. The payment of penalties and interest, if any, shall not alter in any way
24 Defendant's obligation to complete the performance of the requirements of this Consent Decree.

25 51. Non-Exclusivity of Remedy. Stipulated penalties are not the United States'
26 exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII
27 (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to
28 seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable

1 law, including but not limited to an action against Defendant for statutory penalties, additional
2 injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any
3 statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount
4 equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

5 **X. FORCE MAJEURE**

6 52. “Force majeure,” for purposes of this Consent Decree, is defined as any event
7 arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of
8 Defendant’s contractors, that delays or prevents the performance of any obligation under this
9 Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that
10 Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate
11 any potential force majeure event and best efforts to address the effects of any potential force
12 majeure event (a) as it is occurring and (b) following the potential force majeure, such that the
13 delay and any adverse effects of the delay are minimized. “Force Majeure” does not include
14 Defendant’s financial inability to perform any obligation under this Consent Decree.

15 53. If any event occurs or has occurred that may delay the performance of any
16 obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant
17 shall provide notice orally or by electronic or facsimile transmission to EPA, in accordance with
18 Section XV of this Consent Decree (Notices), within 72 hours of when Defendant first knew that
19 the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing
20 to EPA an explanation and description of the reasons for the delay; the anticipated duration of
21 the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for
22 implementation of any measures to be taken to prevent or mitigate the delay or the effect of the
23 delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to
24 assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may
25 cause or contribute to an endangerment to public health, welfare or the environment. Defendant
26 shall include with any notice all available documentation supporting the claim that the delay was
27 attributable to a force majeure. Failure to comply with the above requirements shall preclude
28 Defendant from asserting any claim of force majeure for that event for the period of time of such

1 failure to comply, and for any additional delay caused by such failure. Defendant shall be
2 deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or
3 Defendant's contractors knew or should have known.

4 54. If EPA agrees that the delay or anticipated delay is attributable to a force majeure
5 event, the time for performance of the obligations under this Consent Decree that are affected by
6 the force majeure event will be extended by EPA for such time as is necessary to complete those
7 obligations. An extension of the time for performance of the obligations affected by the force
8 majeure event shall not, of itself, extend the time for performance of any other obligation. EPA
9 will notify Defendant in writing of the length of the extension, if any, for performance of the
10 obligations affected by the force majeure event.

11 55. If EPA does not agree that the delay or anticipated delay has been or will be
12 caused by a force majeure event, EPA will notify Defendant in writing of its decision.

13 56. If Defendant elects to invoke the dispute resolution procedures set forth in
14 Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice.
15 In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of
16 the evidence that the delay or anticipated delay has been or will be caused by a force majeure
17 event, that the duration of the delay or the extension sought was or will be warranted under the
18 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
19 that Defendant complied with the requirements of Paragraphs 56 and 57. If Defendant carries
20 this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected
21 obligation of this Consent Decree identified to EPA and the Court.

22 **XI. DISPUTE RESOLUTION**

23 57. Unless otherwise expressly provided for in this Consent Decree, the dispute
24 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
25 under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute
26 under this Section shall preclude Defendant from raising any such issue as a defense to an action
27 by the United States to enforce any obligation of Defendant arising under this Decree.

1 58. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
2 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
3 considered to have arisen when Defendant sends the United States a written Notice of Dispute.
4 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
5 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
6 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
7 then the position advanced by the United States shall be considered binding unless, within 15
8 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute
9 resolution procedures as set forth below.

10 59. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution
11 procedures, within the time period provided in the preceding Paragraph, by serving on the United
12 States a written Statement of Position regarding the matter in dispute. The Statement of Position
13 shall include, but need not be limited to, any factual data, analysis, or opinion supporting
14 Defendant's position and any supporting documentation relied upon by Defendant.

15 60. The United States shall serve its Statement of Position within 45 Days of receipt
16 of Defendant's Statement of Position. The United States' Statement of Position shall include,
17 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
18 supporting documentation relied upon by the United States. The United States' Statement of
19 Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the
20 dispute in accordance with the following Paragraph.

21 61. Defendant may seek judicial review of the dispute by filing with the Court and
22 serving on the United States, in accordance with Section XV (Notices), a motion requesting
23 judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the
24 United States' Statement of Position pursuant to the preceding Paragraph. The motion shall
25 contain a written statement of Defendant's position on the matter in dispute, including any
26 supporting factual data, analysis, opinion, or documentation, and shall set forth the relief
27 requested and any schedule within which the dispute must be resolved for orderly
28 implementation of the Consent Decree.

1 62. The United States shall respond to Defendant’s motion within the time period
2 allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent
3 permitted by the Local Rules.

4 63. Standard of Review

5 a. Disputes Concerning Matters Accorded Record Review. Except as otherwise
6 provided in this Consent Decree, in any dispute brought under Paragraph 59 pertaining to
7 the adequacy or appropriateness of plans, procedures to implement plans, schedules or
8 any other items requiring approval by EPA under this Consent Decree; the adequacy of
9 the performance of work undertaken pursuant to this Consent Decree; and all other
10 disputes that are accorded review on the administrative record under applicable principles
11 of administrative law, Defendant shall have the burden of demonstrating, based on the
12 administrative record, that the position of the United States is arbitrary and capricious or
13 otherwise not in accordance with law.

14 b. Other Disputes. Except as otherwise provided in this Consent Decree, in any
15 other dispute brought under Paragraph 59, Defendant shall bear the burden of
16 demonstrating that its position complies with this Consent Decree.

17 64. The invocation of dispute resolution procedures under this Section shall not, by
18 itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent
19 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with
20 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but
21 payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If
22 Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid
23 as provided in Section IX (Stipulated Penalties).

24 **XII. INFORMATION COLLECTION AND RETENTION**

25 65. The United States and its representatives, including attorneys, contractors, and
26 consultants, shall have the right of entry into any facility covered by this Consent Decree, at all
27 reasonable times, upon presentation of credentials, to:

28 a. monitor the progress of activities required under this Consent Decree;

- 1 b. verify any data or information submitted to the United States in accordance with
- 2 the terms of this Consent Decree;
- 3 c. obtain samples and, upon request, splits of any samples taken by Defendant or its
- 4 representatives, contractors, or consultants;
- 5 d. obtain documentary evidence, including photographs and similar data; and,
- 6 e. assess Defendant's compliance with this Consent Decree.

7 66. Until five years after the termination of this Consent Decree, Defendant shall
8 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
9 documents, records, or other information (including documents, records, or other information in
10 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
11 its contractors' or agents' possession or control, and that relate in any manner to Defendant's
12 performance of its obligations under this Consent Decree. This information-retention
13 requirement expressly applies to all forms of electronically stored information, including email
14 and any data generated by the Computer Control System. This information-retention
15 requirement shall apply regardless of any contrary corporate or institutional policies or
16 procedures. At any time during this information-retention period, upon request by the United
17 States, Defendant shall provide copies of any documents, records, or other information required
18 to be maintained under this Paragraph.

19 67. At the conclusion of the information-retention period provided in the preceding
20 Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of
21 any documents, records, or other information subject to the requirements of the preceding
22 Paragraph and, upon request by the United States, Defendant shall deliver any such documents,
23 records, or other information to EPA. Defendant may assert that certain documents, records, or
24 other information is privileged under the attorney-client privilege or any other privilege
25 recognized by federal law. If Defendant asserts such a privilege, it shall provide the following:
26 (a) the title of the document, record, or information; (b) the date of the document, record, or
27 information; (c) the name and title of each author of the document, record, or information; (d) the
28 name and title of each addressee and recipient; (e) a description of the subject of the document,

1 record, or information; and (f) the privilege asserted by Defendant. However, no documents,
2 records, or other information created or generated pursuant to the requirements of this Consent
3 Decree shall be withheld on grounds of privilege.

4 68. Defendant may also assert that information required to be provided under this
5 Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to
6 any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures
7 set forth in 40 C.F.R. Part 2.

8 69. This Consent Decree in no way limits or affects any right of entry and inspection,
9 or any right to obtain information, held by the United States pursuant to applicable federal laws,
10 regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain
11 documents, records, or other information imposed by applicable federal or state laws,
12 regulations, or permits.

13 **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

14 70. This Consent Decree resolves the civil claims of the United States for the
15 violations alleged in the amended complaint filed in this action through the date of lodging.

16 71. The United States reserves all legal and equitable remedies available to enforce
17 the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the
18 rights of the United States to obtain penalties or injunctive relief under the Statutes or
19 implementing regulations, or under other federal laws, regulations, or permit conditions. The
20 United States further reserves all legal and equitable remedies to address any imminent and
21 substantial endangerment to the public health or welfare or the environment arising at, or posed
22 by, Defendant’s Facility, whether related to the violations addressed in this Consent Decree or
23 otherwise.

24 72. Notwithstanding any other provision of this Settlement Agreement, if the
25 Financial Information provided by Defendant, or the financial certification contained in
26 Paragraph 81 of this Consent Decree made by the Defendant in signing this Consent Decree, is
27 subsequently determined by the United States to be, in any material respect, false or inaccurate,
28 Defendant shall forfeit all payments made pursuant to this Consent Decree, and the resolution of

1 liability provided by Paragraph 70 shall be null and void. Such forfeiture shall not constitute
2 liquidated damages and shall not in any way foreclose the United States' right to pursue any
3 other causes of action arising from Defendant's materially false or inaccurate information.

4 73. In any subsequent administrative or judicial proceeding initiated by the United
5 States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or
6 Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim
7 based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim
8 preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by
9 the United States in the subsequent proceeding were or should have been brought in the instant
10 case, except with respect to claims that have been specifically resolved pursuant to Paragraph 70.

11 74. This Consent Decree is not a permit, or a modification of any permit, under any
12 federal, State, or local laws or regulations. Defendant is responsible for achieving and
13 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
14 and permits; and Defendant's compliance with this Consent Decree shall be no defense to any
15 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.
16 The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in
17 any manner that Defendant's compliance with any aspect of this Consent Decree will result in
18 compliance with provisions of CAA Section 112(r)(1); CAA Section 112 (r)(7); CERCLA
19 Section 103; EPCRA Section 304, or with any other provisions of federal, State, or local laws,
20 regulations, or permits.

21 75. This Consent Decree does not limit or affect the rights of Defendant or of the
22 United States against any third parties, not party to this Consent Decree, nor does it limit the
23 rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise
24 provided by law.

25 76. This Consent Decree shall not be construed to create rights in, or grant any cause
26 of action to, any third party not party to this Consent Decree.

XIV. COSTS

1
2 77. The Parties shall bear their own costs of this action, including attorneys' fees,
3 except that the United States shall be entitled to collect the costs (including attorneys' fees)
4 incurred in any action necessary to collect any portion of the civil penalty or any stipulated
5 penalties due but not paid by Defendant.

XV. NOTICES

6
7 78. Unless otherwise specified in this Decree, whenever notifications, submissions, or
8 communications are required by this Consent Decree, they shall be made in writing and
9 addressed as follows:

10
11 As to the United States by email: eescdcopy.enrd@usdoj.gov
12 Re: DJ # 90-11-3-11058

13 As to the United States by mail: EES Case Management Unit
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Washington, D.C. 20044-7611
18 Re: DJ # 90-11-3-11058

19 As to EPA: Jeremy Johnstone
20 U.S. Environmental Protection Agency Region IX
21 75 Hawthorne St
22 San Francisco, CA 94105
23 Phone: 415-972-3499
24 Email: johnstone.jeremy@epa.gov

25 As to Defendant: Eddie Wayne Albrecht, General Manager
26 Gibson Wine Company
27 1720 Academy Avenue
28 Sanger, CA 93657
Phone: 559-875-2505
Email: walbrecht@gibsonwine.com

79. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

1 **XVIII. RETENTION OF JURISDICTION**

2 83. The Court shall retain jurisdiction over this case until termination of this Consent
3 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
4 modifying this Decree, pursuant to Sections XI and XIX, or effectuating or enforcing compliance
5 with the terms of this Decree.

6 **XIX. MODIFICATION**

7 84. The terms of this Consent Decree, including any attached appendices, may be
8 modified only by a subsequent written agreement signed by all the Parties. Where the
9 modification constitutes a material change to this Decree, it shall be effective only upon approval
10 by the Court.

11 85. Any disputes concerning modification of this Decree shall be resolved pursuant to
12 Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof
13 provided by Paragraph 63, the Party seeking the modification bears the burden of demonstrating
14 that it is entitled to the requested modification in accordance with Federal Rule of Civil
15 Procedure 60(b).

16 **XX. TERMINATION**

17 86. After Defendant has completed the requirements of Section V (Compliance
18 Requirements), and has paid the civil penalty and any accrued stipulated penalties as required by
19 this Consent Decree, Defendant may serve upon the United States a Request for Termination,
20 stating that Defendant has satisfied those requirements, together with all necessary supporting
21 documentation.

22 87. Following receipt by the United States of Defendant's Request for Termination,
23 the Parties shall confer informally concerning the Request and any disagreement that the Parties
24 may have as to whether Defendant has satisfactorily complied with the requirements for
25 termination of this Consent Decree. If the United States agrees that the Decree may be
26 terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the
27 Decree.

1 approved pursuant to this Decree, the Parties acknowledge that there are no representations,
2 agreements, or understandings relating to the settlement other than those expressly contained in
3 this Consent Decree.

4 **XXIV. FINAL JUDGMENT**

5 93. Upon approval and entry of this Consent Decree by the Court, this Consent
6 Decree shall constitute a final judgment of the Court as to the United States and Defendant.

7 **XXV. APPENDICES**

8 94. The following Appendices are attached to and part of this Consent Decree:

9 “Appendix A” is the Facility Controls Retrofit & Safety Improvements
10 Statement of Work;

11 “Appendix B” is the Written SOP Deficiencies To Correct.

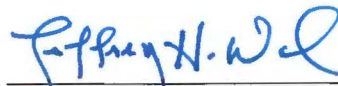
12 Dated and entered this __ day of _____, 2018.
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16 _____
17 UNITED STATES DISTRICT JUDGE
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1 FOR THE UNITED STATES OF AMERICA:
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3 1/17/18

4 DATE



JEFFREY H. WOOD

Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



ANDREW W. INGERSOLL

Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 514-1999
andrew.ingersoll@usdoj.gov

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

 22/Jan. 2018

ALEXIS STRAUSS
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 9



SYLVIA QUAST
Regional Counsel
U.S. Environmental Protection Agency, Region 9



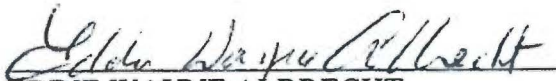
MADELINE A. GALLO
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel

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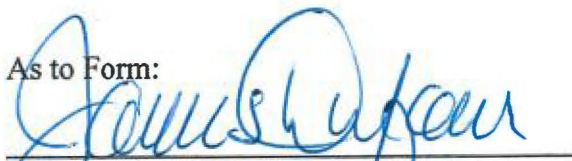
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FOR GIBSON WINE COMPANY:

12-21-17
DATE


EDDIE WAYNE ALBRECHT
General Manager
Gibson Wine Company

JUSTIN CAMPAGNE
Campagne & Campagne

As to Form:


JAMES T. DUFOUR
Dufour Law

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FOR GIBSON WINE COMPANY:

DATE

EDDIE WAYNE ALBRECHT
General Manager
Gibson Wine Company



JUSTIN CAMPAGNE
Campagne & Campagne

As to Form:

JAMES T. DUFOUR
Dufour Law

**APPENDIX A – FACILITY CONTROLS RETROFIT & SAFETY IMPROVEMENTS
STATEMENT OF WORK**

1 1. This Statement of Work (“SOW”) describes a retrofit and upgrade of the
2
3 anhydrous ammonia refrigeration and refrigeration controls systems and interconnection of the
4 controls system to provide system operators communication with the Facility’s entire
5 refrigeration system, including alerts to alarm conditions from all areas and ammonia vapor
6 detection. In addition to the alerts, the new controls system will be set up to automatically shut
7 off ammonia feed to areas where a leak is detected. This SOW also describes the
8 decommissioning of Process #1 and relocation of Chillers #11 & #13 to where they can be tied
9 into Process #4, and moving the King Valve for Process #2 to a more accessible location. This
10 SOW is designed to assist Gibson in complying with the requirements of this Consent Decree
11 and shall not be read to supersede the express terms of the Consent Decree, but to supplement
12 those requirements. If a provision of this SOW conflicts with a provision of the Consent Decree,
13 the Consent Decree shall govern.
14

15 2. The work to be undertaken pursuant to this SOW relates to the following
16 subsystems:

- 17 a. Chiller Process #1: including the removal of ammonia, decommissioning the
18 equipment and moving Chillers #11 & #13 to Process #4. Process #1 will
19 therefore not require any new controls.
- 20 b. Chiller Process #2: including Compressor #2 and the relocation of the King
21 Valve.
- 22 c. Chiller Process #3: including Compressors #3, #4, #5 & #6
- 23 d. Chiller Process #4: including Compressors #7 & #8 and the addition of Chillers
24 #11 & #13.

25 3. OPTO 22 I/O hardware and software will be used to control the ammonia
26 refrigeration system. The computer control system shall have multiple pages on the monitor
27 allowing the operator to look at the general picture of the facility or focus in on individual zones.
28 Each zone will also have time vs. temperature graphs to show a variation in temperatures. Each

1 graph can be expanded from 5 minutes to 14 days providing a history for daily monitoring and
2 troubleshooting. Temperatures shall be monitored and the evaporator pressure regulators
3 adjusted to maintain set points. High and low temperature alarms shall be incorporated into the
4 control schematic allowing dial-out capabilities. This system shall be set up to store temperature
5 information for 15 months for data archiving.

6 4. The suction and discharge pressures and their corresponding evaporation and
7 condensing temperatures shall be monitored. Compressors and condensers will then be staged
8 and controlled to reduce cycling and improve overall efficiency of the refrigeration system by
9 not only floating the discharge pressure, but also by floating the suction pressure. Outdoor
10 temperature and humidity sensors will be used to monitor ambient conditions providing the
11 information on relative humidity and wet bulb temperature. This information will be used for
12 controlling the condensing temperature. Compressor runtime hours will also be logged in the
13 computer which allows for predictive maintenance to be set up for predictive maintenance
14 scheduling and implementation.

15 5. Equipment Schedule. New control panels at each chiller process and new control
16 wire and conduit to all of the associated components shall be installed. Existing control panels,
17 wiring, and conduit will also be removed as necessary as a part of the project. All of the new
18 panels shall be connected via Ethernet, allowing the operator to view the system remotely and
19 receive alerts and alarms via email and/or text messages.

20 6. Control Panel Enclosures: There will be a total of four computer control panels,
21 one for each process and one central computer in the main office. The panels will be located in
22 the vicinity of each process. The central computer that ties them all together will be located at a
23 remote location that can be accessed for control of the systems remotely in the event of a release.
24 With internet connection, each of the systems will also be able to be remotely observed and
25 controlled from any smart device that has been set up to log into the control system. These
26 panels will include refrigeration controls for, among other things required by the Consent
27 Decree, the compressors, condensers, and chillers in each process. The control panels for each
28 process will come equipped with the following:

- 1 a. Touch-Screen Computer. These units will be standard PC computers
2 mounted in the control panel and will come equipped with the following:
3 12” Color Touch-Screen; Microsoft Windows® 7; Two Ethernet ports for
4 communication with the OPTO 22 control network.
- 5 b. OPTO22 Software Package. This package will be remote accessible and
6 user-friendly allowing operators to view and change system set points and
7 calibrate temperatures and pressures. Gibson will be provided with a copy
8 of the program, custom designed by its chosen contractor.
- 9 c. Custom Switch and Light Control Panel equipped with the following:
10 Floor-mounted electrical panel with automotive safety glass in door;
11 Honeywell UDC temperature controllers, used for safety and backup
12 control, and mounted on internal swing door; Opto 22 Digital and Analog
13 I/O modules; Opto 22 Brain boards and module racks; Switches and
14 Lights mounted with UDC’s; Control relays, terminals, etc.
- 15 d. UPS Backup Power Supply to protect the computers against power spikes.

16 7. Ammonia Detection and Alarm Systems. Each chiller process shall have its own
17 ammonia sensor and alarm system with local horn and strobe alerts. The sensors will be tied into
18 the main refrigeration control system that will allow for automatic shutdown of equipment and
19 alarms to be sent out via email and/or text messages. The following detection package shall be
20 provided for each chiller process:

- 21 a. Drager PointGuard 2100 – The Pointguard 2100 is a microprocessor-
22 controlled, standalone gas detector for continuous monitoring of ammonia
23 gasses at lower levels (i.e., 0 to 500ppm). Gas concentration is shown on
24 a large LED display. A horn and two strobes provide alarm annunciation.
25 Redundant internal relays will be used for remote alarming.

26 8. The controls system will be set up with several alarm levels for which the
27 activation levels of each are modifiable. At a minimum, the initial warning level shall be
28 sounded at 25ppm. At this level the leaks are able to be addressed through standard maintenance

1 procedures and so notifications would include plant personnel and the refrigeration maintenance
2 contractor. The next level of alarm initiation shall be at 300ppm which is beyond the limit of
3 standard maintenance PPE for ammonia. This level shall initiate the shutdown of all of the
4 associated refrigeration equipment and notify the Sanger Fire Dept. in addition to plant personnel
5 and the refrigeration maintenance contractor.

6 9. In addition to the vapor detection systems described above which will monitor for
7 ammonia releases, pressure transducers will also be installed on each of the relief vent lines
8 which will automatically detect when one of the relief valves has lifted. As all of the relief
9 valves have been piped into diffusion tanks that mitigate any releases, in the event a relief valve
10 lifts, the computer will notify plant personnel.

11 10. Emergency Operation. The California Mechanical Code requires that the
12 refrigeration system have a means to be shut down via a “Break-Glass Switch.” This SOW
13 includes installation of this safety feature as well for each refrigeration process. The following
14 will be supplied and mounted in an appropriate location for each process: Emergency
15 Refrigeration Break-Glass Switch for emergency shut-down of the refrigeration equipment. This
16 switch will be wired to the system such that it cuts power to all of the refrigeration equipment.

17 11. Relocate Process #2 King Valve. Currently the King Valve for Process #2 is
18 located in a space that is not readily accessible behind the condenser and underneath the chiller.
19 This valve will be relocated to the east of the condenser against the wall (see picture below)
20 where it can be clearly marked and easily reached in the event of an emergency.



1 12. Moving the Process #2 King valve will require a complete pump out of the
2 process. Once the valve has been moved and pressure tested, the system shall be recharged and
3 put back online.

4 13. Relocate Chillers #11 & #13. Process #1 will be decommissioned and all
5 ammonia will be removed from that area of the plant and the process. Chillers #11 & #13 will be
6 moved to an area near Chiller #1 (Silver Bullet) where they can be tied into Process #4. This
7 work shall commence by pumping out the ammonia in Process #1 and transferring the ammonia
8 over to Process #4. Once evacuated, Gibson will remove all of the product transfer lines that are
9 attached to the condenser platform. All associated electrical components will be disconnected
10 and the ammonia piping cut loose to clear the way for removal of the equipment.

11 14. In order to gain access to the chillers, the condenser and condenser platform must
12 first be removed. Once this is done, the chillers and the chiller platform can be accessed for
13 removal and transport to their new location to the north of Chiller #1. After being set, the
14 suction, liquid, relief vent and hot-gas defrost lines will be connected to the chillers. All of the
15 control & isolation valves and level controls will be moved with the chillers and reused.

16 15. In order to integrate Chillers #11 & #13 into Process #4 the following items will
17 be installed:

- 18 a. Liquid Feed Makeup Solenoid valve group and corresponding Liquid
19 Level Float Switch for Chiller #1.
- 20 b. New control panel for Chiller #11 & #13 including temperature and
21 product flow sensors.
- 22 c. Run a Hot Gas Main from Process #4 across the pipe bridge. All other
23 ammonia lines (suction, liquid & relief) are in the vicinity of the location
24 selected for Chillers #11 & #13.

25 16. Miscellaneous. The requirements of this SOW will also include completion of the
26 following: all ammonia pipe and fittings, pipe supports for ammonia piping where necessary, and
27 insulation of all new low temperature piping for the work described in this SOW; pipe & valve
28 identification labeling per IIAR/ANSI recommendations; conversion of all suction regulators

1 over to operation by a 4-20mA modulating motor; wireless communications between Processes
2 #2 & #3 and an Ethernet Cable from Process #3 to #4; a computer for the office that will be
3 connected to the systems and that will allow for remote monitoring and control; all field
4 hardware necessary to complete the installation, including the following: Temperature probes,
5 Pressure transducers, Ambient humidity sensor, and Flow sensors; and placement of existing
6 conduit with new rigid conduit and wiring for all of the 120V refrigeration controls, including
7 new supports for conduit as required.

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APPENDIX B - WRITTEN SOP DEFICIENCIES TO CORRECT

The following written standard operating procedures (“SOP”) for Defendant’s Facility are deficient in the manner noted:

1. SOP AR-CP-EO-101, Emergencies Involving a High-Side Compressor Leak, is not consistent with industry practices applicable to the Facility because the procedure does not identify the valves, and their identifying numbers, to be addressed in the procedure. The SOP is also not consistent with the operator’s level of training for emergency response. The SOP states that this is an “offensive action” which requires First Responder Technician training. Technician Level training documentation consistent with 29 C.F.R. § 1910.120(q) cannot be found in the materials provided. Therefore, the SOP should clearly state that Defendant’s operators will not perform this task.

2. SOP AR-CP-EO-102, Emergencies Involving a Low-Side Compressor Leak, is not consistent with industry practices applicable to the Facility because the procedure does not identify the valves, and their identifying numbers, to be addressed in the procedure. The SOP is also not consistent with the operator’s level of training for emergency response. The SOP states that this is an “offensive action” which requires First Responder Technician training. Technician Level training documentation consistent with 29 C.F.R. § 1910.120(q) cannot be found in the materials provided. Therefore, the SOP should clearly state that Defendant’s operators will not perform this task.

3. SOP AR-CP-MI-103, Top End Maintenance on a Reciprocating Compressor, is not consistent with industry practices applicable to the Facility because the procedure does not identify the qualifications needed to perform the work on the compressor.

4. SOP AR-CP-SU-102, Reciprocating Compressor Startup, is not consistent with industry practices applicable to the Facility because the procedure only identifies a need to keep the suction valve open. The SOP does not identify that the discharge valve shall also be closed, a deficiency that could result in an ammonia release through a relief valve.

5. SOP AR-CP-TO-101, Compressor Pump-Out Procedure, is not consistent with industry practices applicable to the Facility because the procedure only identifies a need to keep

1 the suction valve closed. The SOP does not identify that the discharge valve shall also be closed,
2 and this could result in an ammonia release through a relief valve. The SOP also mentions liquid
3 injection cooling, and this is not applicable for the reciprocating compressors used at the Facility.

4 6. SOP AR-CP-TO-102, Adding Compressor Oil to a Reciprocating Compressor, is
5 not consistent with industry practices applicable to the Facility because the procedure does not
6 state that the compressor should be shut down before adding oil to the compressor.

7 7. SOP AR-EC-ESD-101, Evaporative Condenser Emergency Shutdown, is not
8 consistent with industry practices applicable to the Facility because the procedure does not
9 identify the valves, and their identifying numbers, to be addressed in the procedure.

10 8. SOP AR-EC-SU-101, Evaporative Condenser Initial Start-Up, is not consistent
11 with industry practices applicable to the Facility because the procedure does not identify the
12 ammonia valves (HSD and CD), and their identifying numbers, to be addressed in the procedure.

13 9. SOP AR-EC-NO-101, Evaporative Condenser Normal Operations, is not
14 consistent with industry practices applicable to the Facility because the procedure does not
15 identify the condenser items to be checked (i.e., fan belt tension, proper water flow, vibration) in
16 the procedure.

17 10. SOP AR-EC-SU-102, Evaporative Condenser Start-Up, is not consistent with
18 industry practices applicable to the Facility because the procedure does not identify the ammonia
19 valves (HSD and CD), and their identifying numbers, to be addressed in the procedure.

20 11. SOP AR-EC-TO-101, Evaporative Condenser Pump-Out Procedure, is not
21 consistent with industry practices applicable to the Facility because the procedure does not
22 identify the ammonia valves (HSD and CD), and their identifying numbers, to be addressed in
23 the procedure. Also, the SOP does not specify a time to be allowed for the condenser coil to
24 drain.

25 12. SOP AR-EC-TO-103, Purging Non-Condensables from System at Condenser, is
26 not consistent with industry practices applicable to the Facility because the procedure does not
27 identify the ammonia valves (Purge), and their identifying numbers, to be addressed in the
28 procedure.

1 13. SOP AR-IN-MI-101, Annual Mechanical Integrity Inspection of a High Pressure
2 Cutout Switch, is not consistent with industry practices applicable to the Facility because the
3 procedure does not identify the ammonia valves (discharge), and their identifying numbers, to be
4 addressed in the procedure. Also, the SOP does not state the number of people required to
5 perform this task.

6 14. SOP AR-PRV-MI-101, Annual Mechanical Integrity Inspection of Relief Valves
7 is not consistent with industry practices applicable to the Facility because recognized and
8 generally accepted good engineering practices (“RAGAGEP”) indicate that the inspection should
9 take place every six months, not annually.

10 15. SOP AR-PRV-TO-101, Pressure Relief Valve Installation or Replacement is not
11 consistent with industry practices applicable to the Facility because the procedure states that the
12 valve should be isolated but does not state how to accomplish this step. Also, the SOP does not
13 take into account three-way valves for isolation. Following this SOP as presently written is
14 extremely dangerous to the operator.

15 16. SOP AR-PV-EO-101, Emergencies Involving High Pressure Receiver, is not
16 consistent with industry practices applicable to the Facility because the procedure does not
17 identify the valves, and their identifying numbers, to be addressed in the procedure. Also, the
18 SOP is not consistent with the operator’s level of training for emergency response. The SOP
19 states that this is an “offensive action” which requires First Responder Technician training.
20 Technician Level training documentation consistent with 29 C.F.R. § 1910.120(q) cannot be
21 found in the materials provided. Therefore, the SOP should clearly state that Defendant’s
22 operators will not perform this task.

23 17. SOP AR-PV-ESD-101, High Pressure Receivers Emergency Shutdown
24 Procedures, is not consistent with industry practices applicable to the Facility because the
25 procedure does not identify the valves, and their identifying numbers, to be addressed in the
26 procedure.

1 18. SOP AR-PV-ESD-102, Oil Separators Emergency Shutdown Procedure, is not
2 consistent with industry practices applicable to the Facility because the procedure does not
3 identify the valves, and their identifying numbers, to be addressed in the procedure.

4 19. SOP AR-PV-ESD-103, Oil Pots Emergency Shutdown Procedure, is not
5 consistent with industry practices applicable to the Facility because the procedure does not
6 identify the valves, and their identifying numbers, to be addressed in the procedure.

7 20. SOP AR-PV-ESD-104, Suction Accumulator Emergency Shutdown Procedures,
8 is not consistent with industry practices applicable to the Facility since the procedure does not
9 identify the valves, and their identifying numbers, to be addressed in the procedure.

10 21. SOP AR-PV-TO-102, Draining Oil Out of an Oil Pot, is not consistent with
11 industry practices applicable to the Facility because there are no steps in the procedure, it does
12 not include a step to re-open the spring-loaded valve to release any residual ammonia/oil in the
13 line, and does not include a step to remove the spring-loaded valve after oil draining is complete.
14 This deficient SOP could lead to another serious accident at the Facility.

15 22. SOP AR-SYS-ESD-101, Emergency System Shutdown, is not consistent with
16 industry practices applicable to the Facility because the procedure does not identify the valves,
17 and their identifying numbers, to be addressed in the procedure.

18 23. SOP AR-SYS-ISU-101, Testing and Charging an Ammonia Refrigeration
19 System, is not consistent with industry practices applicable to the Facility because the procedure
20 does not identify the valves, and their identifying numbers, to be addressed in the procedure.
21 Also, the SOP does not include steps to “charge” the system with ammonia.

22 24. SOP SYS-MI-101, Daily Mechanical Integrity Inspection of Refrigeration System
23 Using a Daily Checklist, is not consistent with industry practices applicable to the Facility
24 because the procedure states that the “vessels should never be more than 85% full” while the
25 RAGAGEP indicate that 80% is the maximum vessel level allowed.

26 25. SOP AR-SYS-TO-102, Ammonia Fill Procedure, is not consistent with industry
27 practices applicable to the Facility because the procedure does not identify the valves, and their
28 identifying numbers, to be addressed in the procedure. Also, the SOP also states that the Hills

1 Brothers' driver "is the one in charge" and will notify Defendant's supervisor when the work is
2 completed. This is an extremely dangerous practice since the delivery driver is not an operator
3 trained by the Facility. Defendant's own employee should supervise any refilling of the
4 refrigeration system with anhydrous ammonia to avoid overfilling the system.

5 26. SOP AR-SYS-TO-104, Line/Equipment Break Procedure Preparation, is not
6 consistent with industry practices applicable to the Facility because the procedure does not
7 identify the valves, and their identifying numbers, to be addressed in the procedure. Also, the
8 SOP states that operator should "know the location of the valves which should have to be closed
9 to isolate the line/equipment in an emergency." The SOP line break procedure should include
10 the identification of all valves to be closed for the line break.

11 27. SOP AR-SYS-TO-106, Draining Oil out of system at an Oil Drain Valve, is not
12 consistent with industry practices applicable to the Facility because it does not include a step to
13 re-open the spring-loaded valve to release any residual ammonia/oil in the line, and does not
14 include a step to remove the spring-loaded valve after oil draining is complete. This deficient
15 SOP could lead to another serious accident at the Facility.