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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA

13 Plaintiff,

14 v.

15 GIBSON WINE CO.,

16 Defendant.

**CASE NO. 1:15-cv-01900-AWI-SKO**

**ORDER ENTERING CONSENT  
DECREE**

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**I. Introduction**

19 The United States Environmental Protection Agency (“United States” or “Government”)  
20 initiated the instant environmental protection action against Gibson Wine Company (“Gibson”)  
21 on December 19, 2015, related to a release of anhydrous ammonia at Gibson’s winemaking  
22 facility in Sanger, California on September 11, 2012. The parties have reached a resolution of  
23 this matter, memorialized in the form of a consent decree. Doc. 70-1. The United States  
24 published notice of the consent decree and afforded an opportunity for public comment. *See*  
25 Docs. 70, 71. No comments were received within the 30-day comment period. Doc. 71. The  
26 United States now moves, unopposed, for entry of the consent decree. For the following reasons,  
27 the United States’ motion will be granted.

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1 **II. Legal Standard**

2 As the United States correctly explains, the Court’s review of the terms of a consent  
3 decree in an environmental protection action initiated by the EPA is limited but not empty. The  
4 Court must “actually engage with the information and explain in a reasoned disposition whether  
5 the resolution is “reasonable, fair, and consistent with the purposes that CERCLA is intended to  
6 serve.” *Arizona v. City of Tucson*, 761 F.3d 1005, 1012 (9th Cir. 2014); *United States v.*  
7 *Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 747 (9th Cir. 1995) (citation omitted). The inquiry  
8 into whether the consent decree is fair, reasonable, and consistent with the purposes of CERCLA  
9 is deferential to EPA’s expertise and is based on the particular issues presented by each site and  
10 settlement. *City of Tucson*, 761 F.3d at 1013; *Securities & Exch. Comm’n v. Randolph*, 736 F.2d  
11 525, 529 (9th Cir. 1984) (“[T]he courts should pay deference to the judgment of the government  
12 agency which has negotiated and submitted the proposed judgment.”); *accord United States v.*  
13 *Mead*, 533 U.S. 218, 227-228 (2001) (“[C]onsiderable weight [is] given to an executive  
14 department’s construction of a statutory scheme it is entrusted to administer....”) (citation  
15 omitted). Indeed, consent decree “is not a decision on the merits or the achievement of the  
16 optimal outcome for all parties, but is the product of negotiation and compromise.” *United States*  
17 *v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990). Its outcome need not be optimal in the Court’s  
18 eyes to be approved. *Id.* Instead, the Court must find that the proposed consent decree is  
19 reasonable in comparison to the parties’ estimates regarding liability and consistent with  
20 environmental law. *City of Tucson*, 761 F.3d at 1013.

21 **III. Discussion**

22 **A. The Relief Sought in the Operative Complaint and Gibson’s Position**

23 The United States alleged four claims for relief, collectively identifying a total of 21  
24 theories of alleged violations of federal environmental law. The claims for relief detailed  
25 violations of sections 112(r)(1) and (7) of the Clean Air Act (“CAA”), section 103 of the  
26 Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), and  
27 Section 304 of the Emergency Planning and Community Right-To-Know Act (“EPCRA”). First  
28 Amended Complaint, Doc. 36 (“FAC”) at ¶ 1. In that complaint the United States sought a

1 considerable, albeit not precisely calculable, sum in civil penalties of at least \$37,500 per day per  
2 violation under each of the 21 alleged theories of violation of environmental law, beginning on  
3 January 12, 2009 and potentially continuing until the present. *See* FAC at 20. The United States  
4 also sought injunctive relief designed to bring Defendant’s Sanger facility into compliance with  
5 the CAA and its implementing regulations. The Court need not calculate the precise sum at issue  
6 in order to note that the amount in civil penalties sought by the United States, if fully obtained,  
7 would have been well beyond that which Gibson would ever have had the ability to pay.

8         Early in this litigation, Gibson emphasized its belief that the roughly \$1.1 million sought,  
9 at the time, in civil penalties was dramatically higher than those sought in similar cases. *See* Doc.  
10 21 at 13-14. In fact, “Gibson outlined seven other instances where the EPA, using the  
11 administrative enforcement process, obtained penalties for releases in amounts not exceeding  
12 \$100,000.00” Doc. 21 at 13-14.<sup>1</sup>

13 B. The Consent Decree

14         The consent decree reached by the parties (1) imposes civil penalties in the amount of  
15 \$330,000.00 to be paid of the period of two years, (2) creates a structured timeline for bringing  
16 Defendant’s facility into compliance with applicable safety guidelines, (3) requires installation  
17 and continuous operation of a computer control system to monitor and control the anhydrous  
18 ammonia refrigeration system to be built pursuant to the safety specifications of the consent  
19 decree, (4) requires training of Defendant’s employees to safely operate the system, (5) requires  
20 bi-annual reporting of compliance with the consent decree to the United States for the duration of  
21 the agreement, (6) imposes additional reporting requirements for the term of the consent decree,  
22 and (7) creates a enforcement mechanism for non-compliance with the terms of the consent  
23 decree, including stipulated penalties for any violations. Doc. 70-1. The improvements to the  
24 refrigeration system will cost approximately \$300,000.00. Doc. 71-1 at 2.

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28 <sup>1</sup> Gibson’s exposition of penalties in similar cases was offered in support of its argument that the United States  
selectively enforced its authority.

1 C. Analysis: The Consent Decree is Reasonable, Fair, and Consistent with the Purposes of the  
2 Environmental Laws with which the EPA is Charged with Enforcement

3 The Court must assess the consent decree for procedural and substantive fairness. *City of*  
4 *Tucson*, 761 F.3d at 1011-1012; *City of Colton v. American Promotional Events, Inc.*, ---  
5 F.Supp.3d ----, 2017 WL 6811840, \*2 (C.D. Cal. Dec. 5, 2017) (citing *Montrose*, 50 F.3d at  
6 746). Procedurally, this action has been ongoing for roughly three years. The parties have  
7 actively engaged in discovery and motions practice regarding the sufficiency of the pleadings.  
8 Docs. 13, 32. The proposed consent decree was reached after good faith negotiations by Gibson  
9 and the United States. Doc. 71-1 at 4. The Court is satisfied with the procedural fairness of the  
10 proposed consent decree.

11 Next, the Court considers the substantive fairness of the proposed consent decree, with a  
12 focus on the purposes of the environmental laws, the strengths and weaknesses of the Plaintiff's  
13 case, the expense of further litigation, and the opinions of counsel. *City of Tucson*, 761 F.3d at  
14 1012 (citing *Montrose*, 50 F.3d at 747).

15 The CAA is designed to, *inter alia*, "protect and enhance the quality of the Nation's air  
16 resources," 42 U.S.C. § 7401(b)(3), and reduce the risk of and minimize the consequences of  
17 accidental releases of hazardous substances," 42 U.S.C. § 7412(r)(1). The reporting requirements  
18 of CERCLA and EPCRA, the violation of which were alleged here, are designed to prevent  
19 damage to public health or welfare or the environment resulting from the release of hazardous  
20 substances by informing federal and local authorities. *See* 42 U.S.C. § 9602(a); 42 U.S.C. §  
21 1104(b). The proposed consent decree is a clear effort by the EPA to achieve the purposes of the  
22 CAA, CERCLA, and EPCRA—the consent decree mandates implementation of additional safety  
23 requirements and heightened notice requirements, and imposes additional penalties for any  
24 failures to comply in either respect. That substantive consideration weighs in favor of approval  
25 of the consent decree.

26 Further, the Court would recognize the limited value of further litigation for both parties.  
27 In light of Defendant's financial limitations, the present consent decree spreads the burden of  
28 civil penalties out over the next two years. It is unlikely that a successful verdict against Gibson

1 by the United States would accomplish anything other than forcing Gibson's bankruptcy. Even  
2 assuming that the United States could theoretically recover at least \$37,500.00 per day per  
3 violation of the CAA, CERCLA, and EPCRA—a question which the court does not now  
4 resolve—such a recovery would only be theoretically recoverable. More significantly, the  
5 machinery that allowed for the release at issue in this case may go unrepaired if litigation results  
6 in a large verdict against Gibson, forcing bankruptcy. By resolving this action by way of consent  
7 decree, the United States can impose non-negligible civil penalties, force Gibson to make  
8 improvements to its ammonia refrigeration system that will further the purposes of the CAA,  
9 CERCLA, and EPCRA, and save the unnecessary expenditure of additional governmental  
10 resources. Moreover, counsel for the United States, whose experience and position merit  
11 deference, indicate that the consent decree is reasonable, adequate, and serves the goals of the  
12 environmental laws that they are charged with enforcing.

13 The consent decree is reasonable, adequate and serves the goals of the CAA, CERCLA,  
14 and EPCRA.

15 **IV. Order**

16 Based on the foregoing, IT IS HEREBY ORDERED that the consent decree lodged with  
17 this Court on January 29, 2018, Doc. 70-1, is ENTERED.

18 The Court retains jurisdiction over this action as set forth in Section XVIII of the consent  
19 decree. The Clerk of the Court is respectfully directed to close this case.

20  
21 IT IS SO ORDERED.

22 Dated: March 13, 2018

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25 SENIOR DISTRICT JUDGE  
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