



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of)	U.S. EPA Docket No.: CERC-03-2012-
)	0029
Maryland and Virginia Milk)	
Producers Cooperative)	
Association, Inc.)	
1985 Isaac Newton Square West)	
Reston, Virginia 20190,)	
)	
Respondent.)	
)	Proceedings Pursuant to Sections 103 and
Marva Maid of Newport News)	109 of the Comprehensive Environmental
5500 Chestnut Avenue)	Response, Compensation and Liability
Newport News, Virginia 23605,)	Act, 42 U.S.C. §§ 9603 and 9609
)	
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, as re-delegated to the Administrator of the U.S. Environmental Protection Agency ("EPA"), and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

FINDINGS OF FACT

1. Maryland and Virginia Milk Producers Cooperative Association, Inc. (“MVMP” or “Respondent”) is a dairy farmer cooperative association incorporated under the laws of the Commonwealth of Virginia with its principal place of business located at 1985 Isaac Newton Square West, Reston, Virginia 20190.
2. As a corporation, MVMP is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and its regulations, 40 C.F.R. §§ 302.3.
3. MVMP owns and operates a fluid processing plant located at 5500 Chestnut Avenue in Newport News, Virginia (hereinafter the “Facility”).
4. Beginning in approximately 1962, and at all times relevant to this CA/FO, MVMP was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
5. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and its regulations, 40 C.F.R. § 302.3.
6. On October 16, 2009, EPA conducted an inspection of the Facility to determine compliance with Section 103 of CERCLA and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.
7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
8. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.
9. On March 31, 2008, EPA and MVMP entered into a Consent Agreement/Final Order to resolve violations pertaining to a dairy processing facility owned and operated by MVMP and located in Laurel, Maryland. The resolved violations included a violation under CERCLA Section 103, 42 U.S.C. § 9603, for failure to report a release of more than a reportable quantity of anhydrous ammonia.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

10. The findings of fact contained in Paragraphs 1 through 10 of this CA/FO are incorporated by reference herein as though fully set forth at length.

11. Beginning on or about November 2, 2008, at or about 9:25 a.m. an estimated 1,381 pounds of anhydrous ammonia, Chemical Abstracts Service ("CAS") Registry No. 7664-41-7, was released from the Facility (the "Release").

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

13. The chemical anhydrous ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

14. The Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

16. Respondent should have determined that the Release was in a quantity equal to or exceeding its applicable RQ prior to 10:00 a.m. on November 2, 2008.

17. Respondent did not notify the NRC of the Release until approximately 11:27 a.m. p.m. on November 2, 2008.

18. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

19. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

CIVIL PENALTY

20. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and EPA's Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 103 of CERCLA, 42 U.S.C. § 9603, in the amount of **\$28,209.00** ("civil penalty").

PAYMENT TERMS

21. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of **\$28,209.00** no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer.

22. Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, EPA Docket No. CERC-03-2012-0029;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Contact: Eric Volck (314-487-2105)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Eric Volck (314-487-2105)

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

23. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

24. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

26. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

27. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40

C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

28. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

29. Failure by the Respondent to pay the civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

30. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

31. Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CA/FO.

32. Except as provided in Paragraph 30 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

33. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under to Section 109 of CERCLA, 42 U.S.C. § 9609.

34. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

35. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public

welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

36. Each party to this action shall bear its own costs and attorney's fees.

Maryland and Virginia Milk Producers
Cooperative Association, Inc.

EPA Docket No. CERC-03-2012-0029

FOR MARYLAND AND VIRGINIA MILK PRODUCERS COOPERATIVE ASSOCIATION,
INC.

Jay S. Bryant 11/10/2011
SIGNATURE DATE

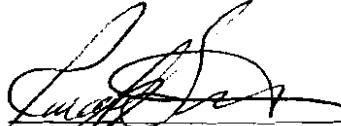
Name: Jay S. Bryant

Title: Chief Executive Officer

Maryland and Virginia Milk Producers
Cooperative Association, Inc.

EPA Docket No. CERC-03-2012-0029

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

November 28, 2011

DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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U.S. EPA Docket No.: CERC-03-2012-0029

Proceedings Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9603 and 9609

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Emergency Response, Compensation and Liability Act, 42 U.S.C. § 9609, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Renee Sarajian
Renee Sarajian
Regional Judicial Officer
EPA, Region III

12/5/11
DATE

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Facility.)	
)	


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Richard T. Rossier, Esquire
McLeod Watkinson & Miller
One Massachusetts Ave., N.W., Suite 800
Washington, D.C. 20001

12/5/11
Date


Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel