



committee (“LEPC”) and the state emergency response commission (“SERC”) of the May 3, 2007 release of ammonia from the Facility.

4. Respondent hereby certifies that it has fulfilled all reporting obligations for the violations cited in the Complaint.
5. Respondent admits the jurisdictional allegations set forth in the Complaint.
6. On November 16, 2007, Respondent filed an Answer to the Complaint in which it denied the allegations in the Complaint that it had failed to comply with the CERCLA notification requirements and the EPCRA notification requirements. In addition, Respondent raised several Affirmative Defenses in the Answer.
7. Pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and taking into consideration the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is twenty-six thousand dollars (\$26,000) plus applicable interest.
8. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the assessment of the civil penalty cited in the foregoing paragraph.
9. Respondent agrees to pay a total amount of twenty-six thousand dollars (\$26,000) plus applicable interest, as a civil penalty for the counts alleged in the Complaint and set forth in Paragraph 3, above, as described below.

Payment of the EPCRA portion of the penalty (Count II, \$13,000) shall be made by cashier’s or certified checks payable to the “Treasurer, United States of America.” The checks shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

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

Payment of the CERCLA portion of the penalty (Count I, \$13,000) plus applicable interest, shall be made by cashier’s or certified checks payable to the “Treasurer, United States of America.” The checks shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

A copy of the checks and any transmittal letters shall be sent to each of the following:

Andrew L. Praschak  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007.

Respondent agrees to pay the total civil penalty amount in two payments as follows:

- a. Payment of the EPCRA portion of the penalty of thirteen thousand dollars (\$13,000) shall be made within thirty (30) calendar days from the effective date of the Final Order in this matter.
- b. Payment of the CERCLA portion of the penalty of thirteen thousand dollars (\$13,000) plus interest shall be made on or before January 26, 2009. Interest shall be calculated from the effective date of the Final Order in this matter, at the applicable rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, and compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- c. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in Paragraph 6, plus allowable interest and such other penalties as provided for in this Consent Agreement.
- d. Further, if payment is not received on or before the due dates, Respondent

agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

- e. Respondent also agrees that a 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date.

- 10. The penalties specified in Paragraphs 7 and 9, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.
- 11. Nothing in this Consent Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.

## **II. GENERAL PROVISIONS**

- 12. Respondent neither admits nor denies the allegations contained in Paragraphs 6 - 10, 13 - 15, 17 - 20, and 22 - 28 of the Complaint. Respondent waives any right to contest the allegations contained in the Complaint and/or to appeal the Final Order accompanying this Consent Agreement.
- 13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Administrator or Deputy Regional Administrator of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Administrator or Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
- 14. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions otherwise commenced pursuant to Federal laws and regulations administered by

EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

15. Each party to this action shall bear its own costs and attorney fees.
16. Full and complete satisfaction of the requirements of this Consent Agreement and Final Order shall resolve Respondent's liability for Federal civil penalties only for the violations and facts alleged in the Complaint.
17. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.
18. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Administrator of EPA Region 2 has been delegated the authority to sign the Final Order in this action.
19. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

Consent Agreement In the Matter of Suiza Dairy Corporation,  
Docket No. CERCLA-02-2007-2019

For Respondent  
Suiza Dairy Corporation:

Noel Rodriguez R-O.  
Signature

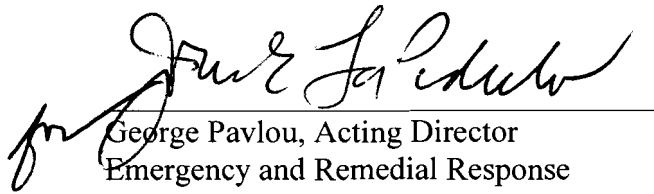
Date: 17 de Julio de 2008

Noel Rodriguez Rosario  
Name (Printed or Typed)

Director de Recursos Humanos  
Title (Printed or Typed)

Consent Agreement In the Matter of Suiza Dairy Corporation,  
Docket No. CERCLA-02-2007-2019

For Complainant  
U.S. Environmental Protection Agency:

  
\_\_\_\_\_  
George Pavlou, Acting Director  
Emergency and Remedial Response  
Division, Region 2

Date: 7/25/08

In the Matter of Suiza Dairy Corporation,  
Docket No. CERCLA-02-2007-2019

**FINAL ORDER**

The Consent Agreement In the Matter of Suiza Dairy Corporation, Docket No. CERCLA-02-2007-2019, signed on behalf of Respondent Suiza Dairy Corporation and the Environmental Protection Agency ("U.S. EPA") is hereby approved, incorporated herein, and issued by U.S. EPA, as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

8-5-07

Date

Alan J. Steinberg

Alan J. Steinberg  
Regional Administrator  
U.S. EPA, Region 2





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 AUG -8 PM 2:00  
REGIONAL HEARING  
CLERK

August 8, 2008

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

Patricio Martinez-Lorenzo  
Union Square Plaza Building, Suite 1200  
416 Ponce de León Avenue  
Hato Rey, PR 00918

Re: In the Matter of Suiza Dairy Corporation, Docket No. EPCRA-02-2007-2019  
Fully Executed Consent Agreement and Final Order

Dear Judge/Colleague:

Enclosed please find a copy of the fully-executed Consent Agreement and Final Order ("CAFO") for the above-referenced case.

Mr. Martinez-Lorenzo, as you will note by the date of this letter and the Certificate of Service, the Final Order was filed with the Regional Hearing Clerk today, August 8, 2008. Pursuant to Paragraph 9 of the CAFO, Respondent's first installment payment of the penalty (\$13,000) is due on or before 30 calendar days after today's date. In addition, the second installment payment (\$13,000 *plus interest*) is due on or before January 26, 2009.

Judge Gunning, in regards to your Order of July 23, 2008, in this matter, the filing of the enclosed, fully executed CA/FO complies with the requirements of that Order.

If you have any questions, please call or e-mail me at (212) 637-3172 or [praschak.andrew@epa.gov](mailto:praschak.andrew@epa.gov). Again, thank you for your cooperation and assistance in this matter.

Sincerely yours,

Andrew L. Praschak  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosures

cc: Regional Hearing Clerk, Region II (with Original CAFO)

**Certificate of Service**

I certify that the foregoing Letter enclosing fully-executed copy of the Consent Agreement and Final Order in this matter, was sent this day in the following manner to the addressees below:

**Original and one copy by hand-delivery to:**

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

**Copy by Pouch Mail to:**

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

**Copy by Fax and Certified Mail,  
Return Receipt Requested to:**

Patricio Martinez-Lorenzo  
Union Square Plaza Building, Suite 1200  
416 Ponce de León Avenue  
Hato Rey, PR 00918  
Fax: (787) 641 5007

Date: August 8, 2008  
Name: Brenda Hadley  
Title: Branch Secretary  
Address: 290 Broadway  
New York, NY 10007