



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

*L.G. RECEIVED
2010 SEP 17 AM 8:54*

In the Matter of:)	
)	
Tuscan/Lehigh Dairies, Inc.	)	U.S. EPA Docket Nos.: CERC-03-2010-0361,
880 Allentown Road	)	EPCRA-03-2010-0361
Lansdale, Pennsylvania 19446,)	
)	
Respondent	)	Proceedings Pursuant to Sections
	)	103 and 109 of the Comprehensive
Tuscan/Lehigh Dairies, Inc.	)	Environmental Response
880 Allentown Road	)	Compensation and Liability Act, as
Lansdale, Pennsylvania 19446,	)	amended, 42 U.S.C. §§ 9603 and 9609,
	)	and Sections 304 and 325 of the
Facility	)	Emergency Planning and Community
	)	Right-to-Know Act, 42 U.S.C.
	)	§§ 11004 and 11045.
)	

CONSENT AGREEMENT AND FINAL ORDER

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, as well as under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation 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.

EPA'S FINDINGS OF FACT

EPA makes the following findings of fact, which except for the facts supporting the jurisdictional allegations, Respondent neither admits nor denies:

1. Respondent, Tuscan/Lehigh Dairies, Inc. ("Tuscan/Lehigh"), is a Delaware corporation with its principal place of business located at 880 Allentown Road, Lansdale, Pennsylvania.
2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
3. Beginning in approximately 2002, and at all times relevant to this CA/FO, Respondent was the owner or operator of the milk processing and packaging facility located at 880 Allentown Road in Lansdale, Pennsylvania (hereinafter the "Facility"), within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004 and was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
4. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
5. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a 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), and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
6. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a)-(c) of EPCRA, 42 U.S.C. § 11004(a)-(c), ("Reportable Quantity" or "RQ"). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.
7. The State Emergency Response Commission ("SERC") for the Facility is, and has been at all times relevant to this CA/FO, the Pennsylvania Emergency Management Agency located at 2605 Interstate Drive, Harrisburg, PA 17110.

8. The Local Emergency Planning Committee ("LEPC") for the Facility is, and has been at all times relevant to this CA/FO, the Montgomery County Local Emergency Planning Committee located at 50 Eagleville Road, in Eagleville, Pennsylvania 19403.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA AND 304 OF EPCRA**

9. The findings of fact contained in paragraphs 1 through 8 of this CA/FO are incorporated by reference herein as though fully set forth at length.

10. Beginning on or about October 2, 2007, at or about 10:00 p.m. (2200 hours), Eastern Standard Time, an estimated one hundred sixty (160) pounds of ammonia, Chemical Abstracts Service ("CAS") No. 7664-41-7, was released from the Facility (the "Release").

11. 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, and an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.

12. The Release constitutes a release of an EHS and hazardous substance in a quantity equal to or exceeding its RQ, requiring immediate notification to the National Response Center ("NRC") pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

13. The Release required immediate notification to the SERC and the LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C.

14. On March 4, 2009, EPA conducted an inspection of the Facility in order to determine the Facility's compliance with Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, ("CERCLA") and Sections 302-312 of EPCRA.

15. On or about May 25, 2010, EPA issued a Show Cause letter to Tuscan/Lehigh indicating that the Agency was considering the assessment of penalties against Tuscan/Lehigh for violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

16. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, the owner or operator of a facility at which hazardous substances are produced, used or stored, 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, 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), of such release.

17. Section 304(a) and 304(b) of EPCRA, 42 U.S.C. § 11004(a),(b), as implemented by 40 C.F.R. § 355.40, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the SERC when there has been a release of a hazardous substance or an extremely hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance or an extremely hazardous substance.

18. Section 304(a) and 304(b) of EPCRA, 42 U.S.C. § 11004(a),(b), as implemented by 40 C.F.R. § 355.40, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the LEPC when there has been a release of a hazardous substance or an extremely hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance or extremely hazardous substance.

19. On or about October 2, 2007, at or about 10:15 p.m. (2215 hours), Eastern Standard Time, Respondent notified the Pennsylvania Department of Environmental Protection (“PADEP”) of the Release.

20. On or about October 3, 2007, at or about 11:07 a.m. (1107 hours), Eastern Standard Time, Respondent notified the NRC of the Release.

21. On or about October 3, 2007, at or about 11:15 a.m. (1115 hours), Eastern Standard Time, Respondent notified the SERC of the Release.

22. On or about October 3, 2007, at or about 11:19 a.m. (1119 hours), Eastern Standard Time, Respondent notified the LEPC of the Release.

**EPA’S CONCLUSION OF LAW RELATED TO THE
VIOLATIONS OF SECTION 103 OF CERCLA AND 304 OF EPCRA**

23. 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).

24. Although Respondent notified the PADEP, the NRC, SERC, and LEPC of the Release, Respondent did not immediately notify the NRC, SERC, or LEPC of the Release as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004. Immediate notification is required as soon as the Respondent knew or should have known that more than an RQ of Ammonia was released from the Facility.

25. Respondent's failure to immediately notify the NRC as soon as the Respondent knew or should have known of the release of Ammonia from the Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Therefore, Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

26. Respondent's failure to immediately notify the SERC of the Release constitutes a violation of Section 304(a) and 304(b) of EPCRA, 42 U.S.C. § 11004(a),(b). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

27. Respondent's failure to immediately notify the LEPC of the Release constitutes a violation of Section 304(a) and 304(b) of EPCRA, 42 U.S.C. § 11004(a),(b). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

28. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of CERCLA Section 103(a), 42 U.S.C. § 9603(a), and EPCRA Section 304(a) and (b), 42 U.S.C. § 11004(a) and (b), in the total amount of \$18,540.30.

PAYMENT TERMS

29. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the "final due date"). A payment of \$6,448.80 shall be made for the CERCLA portion of the penalty. An additional payment of \$12,091.50 shall be made for the EPCRA portion of penalty.

30. Payment shall be made as follows:

a. If payment is to be made by cashier's check, separate CERCLA and EPCRA payment cashier checks shall be made as follows.

i. The CERCLA portion of the penalty, in the amount of \$6,448.80, payable to "EPA-Hazardous Substances Superfund," in care of:

U.S. Environmental Protection Agency
Attn: Superfund Payments

Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Contact: Natalie Pearson, (314-418-4087)

If the cashier's check is sent overnight mail, it should be sent to:

U.S. Environmental Protection Agency
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101

Contact Natalie Pearson, (314-418-4087)

The Respondent shall note on the CERCLA penalty-payment cashier's check the title and docket number of this case, CERC-03-2010-0361.

- ii. The EPCRA portion of the penalty, in the amount of \$12,091.50, payable to "United States Treasury" in care of:

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

If check is sent via overnight mail, it should be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101

The Respondent shall note on the EPCRA penalty-payment cashier's check the title and docket number of this case, EPCRA-03-2010-0361.

b. Payment of the entire penalty amount may be made via EFT (wire transfer) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

c. Payment of the entire penalty amount may be made via Automated Clearinghouse
(ACH) to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

d. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

30. The Respondent shall submit a copy of the checks, or verification of wire transfer or
ACH to the following persons:

Lydia Guy (3RC00)		Cynthia T. Weiss (3RC42)
Regional Hearing Clerk		Senior Assistant Regional Counsel
U.S. EPA, Region III	and	U.S. EPA Region III
1650 Arch Street		1650 Arch Street
Philadelphia, PA 19103-2029		Philadelphia, PA 19103-2029

31. The CERCLA civil penalty stated herein is based upon Complainant's consideration
of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109

of CERCLA, 42 U.S.C. § 9609, and 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)*.

33. The EPCRA civil penalties stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are 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)*.

34. 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.

35. 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 penalty that is paid within thirty (30) calendar days after the final due date. 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).

36. 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 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 penalty remains unpaid.

37. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains 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).

38. Failure by the Respondent to pay the \$18,540.30 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, and Section 325

of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

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

40. For the purpose of this proceeding, Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

41. Except as provided in Paragraph 39 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CA/FO, but expressly waives its rights to contest said allegations in this proceeding.

42. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

43. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, 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.

44. This CA/FO resolves only those civil claims that 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 that 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.

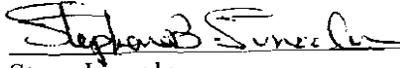
45. Each party to this action shall bear its own costs and attorney's fees.

46. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged herein.

In the Matter of: Tuscan/Lehigh Dairies, Inc.

U.S. EPA Docket Nos. CERC-03-2010-0361
EPCRA-03-2010-0361

FOR TUSCAN/LEHIGH DAIRIES, INC.



Steve Lincoln
Executive Vice-President

August 27, 2010
DATE

In the Matter of: Tuscan/Lehigh Dairies, Inc.

U.S. EPA Docket Nos. CERC-03-2010-0361
EPCRA-03-2010-0361

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

9/13/10
DATE

In the Matter of:)	
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Respondent)	Proceedings Pursuant to Sections
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880 Allentown Road)	Compensation and Liability Act, as
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)	and Sections 304 and 325 of the
Facility)	Emergency Planning and Community
)	Right-to-Know Act, 42 U.S.C.
)	§§ 11004 and 11045.
)	

FINAL ORDER

Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11004 and 11045, and the delegated authority of the undersigned, 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.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/16/10



Renée Sarajian
Regional Judicial Officer
EPA, Region III

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

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Lansdale, Pennsylvania 19446,) amended, ("CERCLA"), 42 U.S.C.
) §§ 9603 and 9609, and Sections 304, 312
) and 325 of the Emergency
Facility) Planning and Community
) Right-to-Know Act, ("EPCRA")
) 42 U.S.C. §§ 11004, 11022 and 11045.
)

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

Allison K. Exall
Curran Tomko Tarski L.L.P.
2001 Bryan Street, Suite 2050
Dallas, Texas 75201

SEP 17 2010

Date



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