



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 SEP 30 PM 12: 50

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CERCLA-08-2010-0007

IN THE MATTER OF:

CATTLEMAN'S CHOICE LOOMIX, LLC.

22915 County Road 15

Johnstown, CO 80535

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30<sup>th</sup> DAY OF September, 2010.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2010 SEP 30 PM 12: 50

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Cattleman's Choice Loomix, LLC )  
22915 County Road 15 )  
Johnstown, Colorado 80534 )

Respondent )

COMPLAINT AND CONSENT AGREEMENT  
(SIMULTANEOUS AND COMBINED)

DOCKET NO: CERCLA-08-2010-0007

STATUTORY AUTHORITY

1. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits set forth at 40 C.F.R. Part 22.
2. EPA is authorized to issue civil administrative actions and assess civil penalties for violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601, et seq., and the implementing regulations.
3. EPA and the Respondent (collectively referred to as the "parties") have agreed to the settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b), and to execute this Complaint and Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) to simultaneously commence and conclude this matter upon issuance of a final order.
4. The undersigned EPA officials have been properly delegated the authority to issue this action.

## COMPLAINT

5. Cattleman's Choice Loomix, LLC., ("Respondent") is a "facility" as that term is defined by section 302(3) of CERCLA, 42 U.S.C. § 9601(9).
6. Respondent is an owner or operator of a facility which is located at 1320 South 24th Street West, Billings, Montana (the "Facility").
7. On February 4, 2010, approximately twenty six thousand seven hundred (26,700) pounds of hydrochloric acid was released from Respondent's Facility due to equipment damage.
8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that a person in charge of a facility, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity ("RQ"), immediately notify the National Response Center.
9. Hydrochloric acid is a hazardous substance as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) with a reportable quantity ("RQ") of 5,000 pounds as set forth in 40 C.F.R. Part 302, Table 302.4.
10. Respondent did not immediately notify the National Response Center of the hydrochloric acid release at the Facility as soon as Respondent had knowledge of the release.
11. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

## CONSENT AGREEMENT

12. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Complaint and Consent Agreement. However, Respondent neither admits nor denies EPA's specific factual allegations contained herein.

### Civil Penalty

13. Pursuant to CERCLA § 109(a)(1)(A), 42 U.S.C. § 9609(a)(1)(A), EPA has considered 1) the nature, circumstances, extent and gravity of Respondent's violations; 2) the Respondent's prior compliance history; 3) the Respondent's degree of culpability; 4) the Respondent's economic benefit or savings resulting from the violations; 5) the Respondent's ability to pay the proposed penalty; and 6) any other matters that justice requires may be considered, and has determined that an appropriate civil penalty to settle this action is **Eight Thousand Nine Hundred Dollars (\$8,900.00)**.

14. Respondent consents, for the purpose of settlement, to the issuance of a final order and to the payment of the civil penalty cited in the foregoing paragraph.

15. Within thirty (30) days of receiving a signed final order in this matter, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "*Treasurer, United States of America*," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Wire Transfers:

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 "

ACH Transactions:

PNC Bank/Remittance Express  
ABA: 051036706  
Account Number: 310006  
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

[www.PAY.GOV](http://www.PAY.GOV)

**A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:**

David Cobb  
U.S. EPA Region 8 [8ENF-AT]  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA Region 8 [8RC]  
1595 Wynkoop Street  
Denver, CO 80202-1129

16. In the event Respondent fails to pay or does not pay the full amount of its civil penalty by the due date, Respondent shall pay interest and late charges as specified below.

**Stipulated Penalties and Late Fees**

17. Interest on the civil penalty amount shall accrue from the date of the receipt of the signed final order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C.

§ 3717. Interest on the stipulated penalty amount shall begin to accrue 31 days after Respondent's receipt of EPA's demand for such penalties. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first thirty (30) days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days.

**GENERAL PROVISIONS**

18. Upon signing and returning this Complaint and Consent Agreement to EPA, Respondent waives the opportunity for a hearing pursuant to The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

19. This Complaint and Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibility under this Complaint and Consent Agreement.

20. Nothing in this Complaint and Consent Agreement shall relieve Respondent of its duty to comply with CERCLA and the implementing regulations. Furthermore, this Complaint and 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 federal, state or local permit.

21. Failure by Respondent to comply with any of the terms of this Complaint and Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

22. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs, interest, or any appropriate penalty, not inconsistent with this Complaint and Consent Agreement, associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the provisions of this Complaint and Consent Agreement.

23. Each undersigned representative of the parties to this Complaint and Consent Agreement certifies that he or she is fully authorized by the party represented to execute and legally bind the party to the terms and conditions of this Complaint and Consent Agreement.

24. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
25. This Complaint and Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the violations alleged herein.
26. Each party agrees to bear its own costs and attorneys fees in connection with these matters.
27. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

**EFFECTIVE DATE**

28. This Complaint and Consent Agreement shall become effective upon filing with the Regional Judicial Officer.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 9/27/10

By: Cynthia J. Reynolds  
Cynthia J. Reynolds, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 9/29/10

By: Michael T. Risner  
Michael T. Risner, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 9/29/10

By: Linda Kato

Linda Kato  
Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

CATTLEMAN'S CHOICE LOOMIX  
dba CATTLEMAN'S CHOICE LOOMIX, LLC

Date: 9.22.2010

By: Kenneth P. Munsch  
(Signature)

Kenneth P. Munsch, President  
(Printed Name & Title)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: MEMORANDUM

SUBJECT: Cattleman's Choice Loomix, LLC  
CERLCA 103/EPCRA 304 Penalty Justification

FROM: David Cobb  
Technical Enforcement Program  
CERCLA § 103/EPCRA/CAA § 112(r) Enforcement Program

TO: The File

The following is an explanation for the final CERCLA § 103/EPCRA § 304 penalty justification for Cattleman's Choice Loomix, LLC (Loomix).

**The proposed penalty is \$17,700 (\$8,900 with adjustment factors).** This penalty was calculated using the Enforcement Response Policy for Sections 304, 311, and 311 of EPCRA and Section 103 of CERCLA, amended May 3, 2005. Per the Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009), an inflation adjustment multiplier of 1.0983 was used and the final units rounded to the nearest \$100 as required by the Memorandum from Thomas Skinner, dated September 21, 2004.

- A. Nature: Failure to immediately notify the NRC
- B. Extent: Level 1 - No immediate notification to the NRC within 2 hours
- C. Gravity: Level B – amount released was greater than 5, but less than 10 times the RQ
- D. Circumstances: Surrounding population not effected
- E. Per Day Penalties: n/a (EPA/State notified after one day)
- F. Adjustment Factors:

- a. F) Size of Business = 15% reduction: <100 & < 20 million/annual sales;
- b. G) Attitude = 35% reduction (Cooperation 25% & willingness to settle 10%)

Calculation:

- Extent = Level 1 (>2 hours)
- Gravity = Level B (5 – 10x RQ)
- Circumstances = no injuries/effected population/late call made to EPA/State = \$17,700
- Adjustment Factors: Size of Business = 15%; Attitude = 35%

$$= \$17,700 - (.5 \times 17,700) = \$8,850$$

<b>EXTENT (timeliness of notification)</b>	<b>LEVEL A (&gt;10x RQ)</b>	<b>LEVEL B (&gt;5 and ≤ 10x RQ)</b>	<b>LEVEL C (&gt;1 and ≤ 5x RQ)</b>
<b>LEVEL 1 (&gt; 2 hours)</b>	\$35,700 - \$26,500	<b>\$26,500 - \$17,700</b>	\$17,700 - \$8,800
<b>LEVEL 2 (1 -2 hours)</b>	\$26,600 - \$17,700	\$17,700 - \$8,900	\$8,900 - \$4,400
<b>LEVEL 3 (&gt;15 minutes - &lt; 1 hour)</b>	\$17,700 - \$8,900	\$8,900 - \$4,400	\$4,400 - \$2,200

\*Table II, page 19, multiplied by an inflation adjustment multiplier of 1.0983 (Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009))



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** in the matter of **CATTLEMAN'S CHOICE LOOMIX, LLC.; DOCKET NO.: CERCLA-08-2010-0007** was filed with the Regional Hearing Clerk on September 30, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Linda Kato, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 30, 2010, to:

Michael Jarosz, Ph.D.  
Cattleman's Choice Loomix, LLC  
22915 County Road 15  
Johnstown, CO 80534

E-mailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

September 30, 2010

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

