

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. CERCLA-05-2023-0008
)	- EPCRA-05-2023-0009
Michigan Milk Producers Association)	
Constantine, Michigan,)	Proceeding to Assess a Civil Penalty Under
Respondent.)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation and
)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
)	to-Know Act of 1986
)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Michigan Milk Producers Association, a Michigan not for profit corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$67,544 per day of violation, for violations of CERCLA Section 103, and EPCRA Section 304, that occurred after November 2, 2015, and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 125 Depot Street, Constantine, Michigan (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent's facility consists of a building, structure, installation, equipment, pipe, or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia (CAS #7664-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this CAFO, Respondent produced, used, or stored anhydrous ammonia at the facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On July 22, 2022, at or about 12:15 a.m., a release occurred from Respondent’s facility of approximately 1,110 pounds of anhydrous ammonia (the release).

32. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

33. During the release, approximately 1,110 pounds of anhydrous ammonia spilled, leaked, pumped, discharged, or escaped into the ambient air.

34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the release on July 22, 2022, at approximately 12:15 a.m.

37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The release was likely to affect Michigan.

40. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The release was likely to affect St. Joseph County, Michigan.

42. At all times relevant to this CAFO, the St. Joseph County LEPC was the LEPC for St. Joseph County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1 (failure to immediately notify NRC)

43. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

44. Respondent notified the NRC of the release on July 22, 2022, at 2:03 p.m.

45. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

46. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2 (failure to immediately notify SERC)

47. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

48. Respondent notified the Michigan SERC of the release on July 22, 2020, at 2:10 p.m.

49. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

50. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3 (failure to immediately notify LEPC)

51. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

52. Respondent notified the LEPC of the release on July 22, 2022, at 2:16 p.m.

53. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

54. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

55. Complainant has determined that an appropriate civil penalty to settle this action is \$24,047 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$24,047 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an Automated Clearinghouse (ACH) also known as REX or remittance express payable to "EPA Hazardous Substance Superfund," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Michigan Milk Producers Association, the docket number of this CAFO CERCLA-05-2023-0008 and the billing document number 2752330B008.

57. Complainant has determined that an appropriate civil penalty to settle this action is \$48,094 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$48,094 civil penalty for the EPCRA violations. Respondent must pay the penalty by submitting an ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Michigan Milk Producers Association, and the docket number of this CAFO EPCRA-05-2023-0009.

59. Respondent must send a copy of the payment method to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
R5hearingclerk@epa.gov

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
entzminger.james@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
king.cynthia@epa.gov

60. This civil penalty is not deductible for federal tax purposes.

61. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 74, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

63. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and donating LUCAS 3, v3.1 Chest Compression System, Includes Hard Shell Case, Slim Back Plate, (2) Patient Straps, (1)

Stabilization Strap, (2) Suction Cups, (1) Rechargeable Battery and Instructions for use With Each Device; a LUCAS Desk-Top Battery Charger; a LUCAS External Power Supply; a LUCAS 3 Battery - Dark Grey - Rechargeable LiPo; and a LUCAS Disposable Suction Cup (3 pack) for the Constantine Fire Department with jurisdiction over the Constantine, Michigan facility.

64. At its Constantine, Michigan facility, Respondent must complete the SEP as follows:

- a. Within 30 days of the effective date of this CAFO, Respondent must submit the purchase request document to acquire the equipment listed in paragraph 63.
- b. Within one-year of the effective date of the CAFO, Respondent will take delivery of equipment listed in paragraph 63 and donate that equipment to the Constantine Fire Department.
- c. Within one-year of the effective date of the CAFO, Respondent will prepay for four years of equipment maintenance.

65. Respondent must spend at least \$18,091 to purchase and donate the equipment identified in paragraph 63.

66. Respondent must spend \$397 per year or \$1,588.00 total for four years to maintain the equipment identified in paragraph 63.

67. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. That the SEP is not a SEP that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

- c. That Respondent has not received and will not receive credit for the SEP in any other enforcement action; and
- d. That Respondent shall neither generate nor use any pollutant reductions from the SEP as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

68. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

69. Respondent must submit a SEP completion report to U.S. EPA 365 days after the effective date of the CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. A letter from the fire chief of the Constantine Fire Department reporting that the equipment identified in paragraph 63 was received, listing the equipment and the date of the equipment was received, and that the four year maintenance of the equipment was prepaid;
- c. Description of any operating problems and the actions taken to correct the problems;
- d. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

70. Respondent must submit all notices and reports required by this CAFO by email to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at entzminger.james@epa.gov.

71. In any report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

72. Following receipt of the SEP completion report described in paragraph 69, above,

U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP, or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 74. -

73. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 74, below.

74. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 64, Respondent must pay a penalty of \$20,871.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraphs 65 and 66, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily but spent less than 90 percent of the amount set forth in paragraph 65 and 66, Respondent must pay a penalty of \$6,261. The stipulated penalty will be \$2,087 to the “EPA Hazardous Substance Superfund,” and \$4,174 to the “Treasurer, United States of America.”
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 69, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

75. U.S. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

76. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraphs 55-59, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts. At the time U.S. EPA makes a demand for any stipulated penalties it will also send a copy of that demand to U.S. EPA’s Cincinnati Finance Center via email at CINWD_AcctsReceivable@epa.gov.

77. Any public statement that Respondent makes referring to the SEP must include the following language, “Respondent undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Respondent for violations of CERCLA and EPCRA.”

78. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

79. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

80. The parties' consent to service of this CAFO by email at the following valid email addresses: king.cynthia@epa.gov (for Complainant) and CBarbieri@fosterswift.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

81. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

82. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

83. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

84. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

85. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

86. The terms of this CAFO bind Respondent and its successors and assigns.

87. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

88. Each party agrees to bear its own costs and attorney's fees in this action.

89. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Michigan Milk Producers Association, Constantine, Michigan
Docket Nos. CERCLA-05-2023-0008; EPCRA-05-2023-0009**

Michigan Milk Producers Association, Respondent

4-14-23

Date

Greg Soehnlen

Greg Soehnlen
Chief Operating and Business Development Officer
Michigan Milk Producers Association

U.S. Environmental Protection Agency, Complainant

Date

Jason El-Zein, Manager
Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

Date

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

**In the Matter of: Michigan Milk Producers Association, Constantine, Michigan
Docket Nos. CERCLA-05-2023-0008; EPCRA-05-2023-0009**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5