

FILED

NANCY J. MARVEL
Regional Counsel

2012 SEP 26 AM 9: 56

MARGARET ALKON
Assistant Regional Counsel

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3950

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:)
) Docket No. EPCRA-09-2012- 000 6
 Foster Dairy Farms)
) **CONSENT AGREEMENT AND FINAL**
 Respondent.) **ORDER PURSUANT TO 40 C.F.R.**
) **§§ 22.13 and 22.18**

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystem Division, United States Environmental Protection Agency, Region IX ("EPA"), and Foster Dairy Farms ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter "EPCRA"), the regulation promulgated thereunder at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,

40 C.F.R. Part 22, for violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.

2. Complainant is the Director, Communities and Ecosystems Division, EPA Region IX. The Administrator of the United States Environmental Protection Agency has delegated the authority to file this action and to sign a consent agreement settling this action under EPCRA to the Regional Administrator Region IX by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX has further delegated this authority to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

3. Respondent is a California corporation with a facility located at 415 Kansas Ave, Modesto, California.

B. APPLICABLE STATUTES AND REGULATIONS

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

5. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in North American Industrial Classification System (NAICS) sector code 311 – Food Manufacturing; and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities exceeding the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

6. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and

40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1st of each year, a Toxic Chemical Release Inventory reporting form (hereinafter "**Form R**") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

7. Section 325(c) of EPCRA and 40 C.F.R. Part 19 authorizes EPA to assess a penalty of up to \$37,500 for each violation of Section 313 of EPCRA that occurred after January 12, 2009.

C. ALLEGATIONS

8. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7). At all times relevant to this matter, Respondent was an owner and operator of a "facility," as that term is defined at 40 C.F.R. § 372.3, pursuant to Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), which is located at 415 Kansas Ave, Modesto, California (hereinafter the "**Facility**"). At all times relevant to this matter, the Facility had 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3, and total corporate entity sales of over 10 million dollars.

9. The Facility is classified in NAICS Code 311511 which falls under the general category of NAICS Code 311 – Food Manufacturing.

10. During the calendar year 2008, Respondent manufactured approximately 222,651 pounds of **nitrate compounds** (water dissociable; reportable only when in aqueous solution) and otherwise used approximately 226,651 pounds of **nitric acid**, which are listed under 40 C.F.R. § 372.65. Respondent manufactured **nitrate compounds** in amounts over the threshold of 25,000

pounds set forth at 40 C.F.R. § 372.25(a). Respondent otherwise used **nitric acid** in amounts over the threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(a).

11. Respondent failed to submit timely Form Rs for nitric acid and nitrate compounds to the EPA Administrator and the State of California on or before July 1, 2009 for the calendar year 2008, as required by 40 C.F.R. § 372.22, pursuant to Subsection 313(b) of EPCRA. Each of Respondent's failure to submit timely Form Rs for nitric acid and nitrate compounds that Respondent processed at the Facility during the calendar year 2008 constitutes a violation of 40 C.F.R. Part 372, pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023.

D. RESPONDENT'S ADMISSIONS

12. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.F of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. RESPONDENT'S CERTIFICATION

13. In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA all of the required toxic chemical release inventory reporting forms in compliance with Section 313 of EPCRA and the regulations promulgated thereunder; and (2) it has complied with all other EPCRA requirements at all facilities under its control.

**F. CIVIL ADMINISTRATIVE PENALTY, RETENTION OF RIGHTS, AND
BINDING EFFECT**

14. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992 provides for a penalty of SIXTY THOUSAND SEVEN HUNDRED dollars (\$60,700) for the violations alleged in Section I.C. of this CAFO.

15. EPA's final policy statement on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit Policy") has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment and reducing transaction costs associated with violations of the laws EPA is charged with administering. If certain specified criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit Policy. These criteria are (1) discovery of the violation(s) through an environmental audit or due diligence; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

16. Complainant has determined that Respondent has satisfied all of the criteria under the Audit Policy and thus qualifies for the elimination of civil penalties in this matter.

Accordingly, the civil penalty assessed in this matter is zero (\$0) dollars.

17. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is based upon documentation that Respondent has provided to establish that it satisfies these criteria. Complainant and Respondent agree that, should any material fact upon which Complainant relied in making its finding subsequently prove to be other than as represented by Respondent, this CAFO may be voided in whole or in part.

18. The terms of this CAFO constitute a full settlement of the civil administrative matter filed under the docket number above. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

19. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

20. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

21. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

22. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Respondent's obligations under this Consent Agreement, if any, shall end when Respondent has performed all of the terms of the Consent Agreement in accordance

with the Final Order. Complainant and Respondent consent to the entry of the CAFO without further notice.

FOR RESPONDENT, FOSTER DAIRY FARMS:

Aug. 17, 2012
DATE

Nancy Galli

Name:

Nancy Galli

Title:

Corp. Dir. of Risk Management

FOR COMPLAINANT, EPA REGION IX:

9/13/2012
DATE

Ruthene A. Taylor for

Enrique Manzanilla

Director

Communities and Ecosystems Division

U.S. ENVIRONMENTAL PROTECTION AGENCY,

REGION IX

II. FINAL ORDER

Complainant EPA Region 9 and Respondent Foster Dairy Farm having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-09-2012-~~0006~~) be entered. This CAFO shall become effective upon filing.

09/25/12
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number EPCRA-09-2012-0006 , was filed on 9/26/12 , with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Nancy Galli
Corporate Director of Risk Management
Foster Dairy Farms
529 Kansas Avenue
Modesto, California 95351
Certified Return Receipt Article No: 7011 1570 0002 9580 8301

Dated: _____

9/26/12



Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7011 1570 0002 9580 8301
Return Receipt Requested

SEP 14 2012

Re: EPCRA-09-2012- 0006

Nancy Galli
Corporate Director of Risk Management
Foster Dairy Farms
529 Kansas Avenue
Modesto, CA 95351

Dear Ms. Galli:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, which contains the terms of the settlement reached with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Lily Lee at (415) 947-4187 or have your attorney contact Margaret Alkon at (415) 972-3890.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure