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U.S. EPA REGION IX
REGIONAL HEARING CLERK

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Region IX
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Attorneys for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)	
)	Docket No. EPCRA-9-2010-0029
Rockview Dairies, Inc.,)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	
_____)	

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region IX ("EPA"), and Respondent, Rockview Dairies, Inc., agree to settle this matter initiated against Respondent under 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 ("EPCRA") and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18.

A. AUTHORITY

1. EPA initiated this civil administrative proceeding for the assessment of a civil administrative penalty pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22 by issuing a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent on September 29, 2010.

2. The Complaint alleges that Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set forth at 40 C.F.R. Part 372, by failing to submit timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms for nitric acid and nitrate compounds, chemicals it otherwise used and/or processed at its dairy product processing facility, for calendar years 2005 through 2008.

3. EPA and Respondent have agreed to resolve this civil administrative proceeding by executing this CAFO.

B. RESPONDENT’S ADMISSIONS

4. 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 the Complaint and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

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C. CIVIL ADMINISTRATIVE PENALTY

5. In settlement of the violations specifically alleged in the Complaint, Respondent agrees to pay a civil administrative penalty of ONE HUNDRED TWENTY-FOUR THOUSAND, THREE HUNDRED DOLLARS (\$124,300) within 30 days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be paid by remitting a certified or cashier's 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:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

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St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 – checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfol.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check (or notification that the payment has been made by one of the other methods listed above) and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Russell Frazer
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region IX

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75 Hawthorne Street
San Francisco, CA 94105

Ivan Lieben
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

6. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

7. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 5 within 30 days of the effective date of this CAFO, then Respondent shall also pay to EPA a stipulated penalty of FIFTY-THREE THOUSAND, THREE HUNDRED DOLLARS (\$53,300). This stipulated penalty shall be due and payable upon EPA's written request, together with the initially assessed civil administrative penalty, resulting in a total penalty due of ONE HUNDRED SEVENTY SEVEN THOUSAND, SIX HUNDRED DOLLARS (\$177,600). In addition, failure to pay the assessed civil administrative penalty within 30 days of the effective date of this CAFO may lead to any or all of the following actions:

(a) The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

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(b) The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

(c) EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

(d) In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 5 of this CAFO. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the

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Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RESPONDENT'S CERTIFICATION

8. In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA and the State of California the toxic chemical release inventory reporting forms for nitric acid and nitrate compounds for calendar years 2005 through 2008 for its facility located at 7011 Stewart and Gray Road, Downey, California 90241, in compliance with Section 313 of EPCRA and the regulations promulgated there under; and (2) it is otherwise in compliance with Section 313 EPCRA requirements at all facilities under its control.

E. RETENTION OF RIGHTS

9. 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 the Complaint. 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 the Complaint; 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 the Complaint.

10. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's

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duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

F. ATTORNEYS' FEES AND COSTS

11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

G. EFFECTIVE DATE

12. 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.

H. BINDING EFFECT

13. 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.

14. 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.

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FOR RESPONDENT ROCKVIEW DAIRIES, INC.:

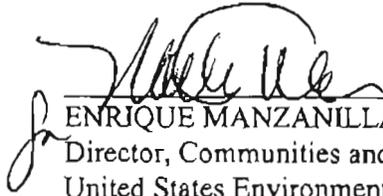
7-11-11
DATE:

BY: 
NAME: Joe Valadez
TITLE: CFO

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FOR COMPLAINANT, EPA REGION IX:

7/13/2011
DATE



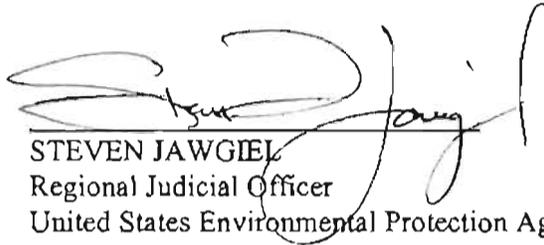
ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
United States Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and Respondent, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-9-2010-0029) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED TWENTY-FOUR THOUSAND, THREE HUNDRED DOLLARS (\$124,300) within 30 days of the effective date of this CAFO, and comply with the terms and conditions set forth in the Consent Agreement.

07/14/11
DATE



STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental Protection Agency, Region IX

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CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"), Docket Number EPCRA-09-2010-0029, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that true and correct copies of the CAFO were sent to the Respondent at the following addresses:

Mr. Joe Valadez
CFO
Rockview Dairies, Inc.
7011 Stewart & Gray Road
Downey, CA 90241-0668

Certified Mail No: 7003 3110 0006 1998 2752


~~Steven Amsey~~ Bryan K Goodwin
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

7/16/11
Date



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

Certified Mail No. 7003 3110 0006 1998 2752
Return Receipt Requested

JUL 14 2011

Re: EPCRA-09-2010-0029

Joe Valadez
CFO
Rockview Dairies, Inc.
7011 Stewart & Gray Road
Downey, CA 90241-0668

Dear Mr. Valadez:

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 Russ Frazer at (415) 947-4220 or have your attorney contact Ivan Lieben at (415) 972-3914.

Sincerely,


Enrique Marzanilla, Director
Communities and Ecosystems Division

Enclosure