



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

Cynthia T. Weiss  
Assistant Regional Counsel  
(215) 814-2659  
weiss.cynthia@epa.gov

MAR 31 2008

VIA POUCH MAIL

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Re: **In the Matter of Maryland & Virginia Milk Producers Cooperative Association, Inc.**  
**U.S. EPA Docket Nos. CAA-03-2007-0291, CERC-03-2007-0291, and EPCRA-03-2007-0291**

The Honorable Judge Biro:

Enclosed please find a copy of a Consent Agreement and Final Order, along with a certificate of service, for the above-referenced matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia T. Weiss".

Cynthia T. Weiss  
Assistant Regional Counsel

Enclosure

cc: Richard Waddington, Esq.



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

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REGIONAL OFFICE

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|--------------------------------------|---|---|
| <b>In the Matter of:</b>             | ) | <b>EPA Docket Nos.:</b>                       |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>CAA-03-2007-0291</b>                       |
| <b>Producers Cooperative</b>         | ) | <b>CERC-03-2007-0291</b>                      |
| <b>Association, Incorporated</b>     | ) | <b>EPCRA-03-2007-0291</b>                     |
| <b>1985 Isaac Newton Square West</b> | ) |   |
| <b>Reston, VA 20190,</b>             | ) |   |
|                                      | ) |   |
| <b>Respondent,</b>                   | ) | <b>Proceedings Pursuant to Sections</b>       |
|                                      | ) | <b>112(r)(7), 113(a)(3) and 113(d) of the</b> |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>Clean Air Act, as amended, (“CAA”),</b>    |
| <b>Producers Cooperative</b>         | ) | <b>42 U.S.C. §§ 7412(r)(7), 7413(a)(3),</b>   |
| <b>Association, Incorporated,</b>    | ) | <b>7413(d), Sections 103 and 109 of the</b>   |
| <b>8321 Leishear Road</b>            | ) | <b>Comprehensive Environmental</b>            |
| <b>Laurel, Maryland 20723,</b>       | ) | <b>Response, Compensation, and</b>            |
|                                      | ) | <b>Liability Act, as amended, 42 U.S.C.</b>   |
| <b>Facility.</b>                     | ) | <b>§§ 9603 and 9609, and Sections 304,</b>    |
|                                      | ) | <b>311, 312 and 325 of the Emergency</b>      |
|                                      | ) | <b>Planning and Community Right-to-</b>       |
|                                      | ) | <b>Know Act, 42 U.S.C. §§ 11004, 11021,</b>   |
|                                      | ) | <b>11022 and 11045.</b>                       |
|                                      | ) |   |

**CONSENT AGREEMENT AND FINAL ORDER**

**Statutory Authority**

This Consent Agreement (“CA”) is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. § 9609, in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and by Section 113 of the Clean Air Act, as amended, (“CAA”), 42 U.S.C. § 7413, under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22, (“Part 22”), in Section 22.18(b)(2). The President has delegated his authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Administrator. The Administrator has delegated that authority and the authority delegated to him under Section 325 of EPCRA, 42

U.S.C. § 11045, and Section 113 of the CAA, 42 U.S.C. § 7413, to the Regional Administrator of EPA, Region III, who has redelegated those authorities to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

### **Preliminary Statement and Stipulations**

The Respondent, Maryland and Virginia Milk Producers Cooperative Association, Inc. (“Respondent” or “MVMP”), by its attorney or other authorized representative, and EPA stipulate as follows:

1. EPA issued an Administrative Complaint (“Complaint”) against Respondent, docketed at Nos. CAA-03-2007-0291, CERC-03-2007-0291, EPCRA-03-2007-0291, on September 13, 2007.
2. The Complaint alleged that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to immediately notify the National Response Center (“NRC”) of the July 4, 2006 release of ammonia (the “Release”) from Respondent’s milk processing facility located at 8321 Leishear Road, Laurel, Maryland 20723 (the “Facility”).
3. The Complaint also alleged that Respondent violated Section 304(a) and (b) of EPCRA by failing to immediately notify the National Response Center (“NRC”), the State Emergency Response Commission (“SERC”), and the Local Emergency Response Committee (“LEPC”) following the Release. The Complaint further alleges that Respondent violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a follow-up report regarding the Release to SERC and the LEPC as soon as practicable after the Release.
4. The Complaint also alleged that Respondent had not complied with EPCRA’s emergency preparedness and right-to-know requirements by failing to provide complete and accurate reports pursuant to Section 311 of EPCRA, 42 U.S.C. § 11021, to the SERC, the LEPC and the local fire department for calendar year 2005. During calendar year 2005, four hazardous chemicals, ammonia, chlorine, sodium hydroxide and sulfur dioxide, were present in quantities that exceeded their respective reporting thresholds, 500 pounds, 100 pounds, 10,000 pounds and 500 pounds. The Complaint alleges that MVMP violated Section 311 of EPCRA by failing to provide MSDSs, or a complete and accurate list of MSDS chemicals, for these chemicals present at its Facility in quantities equal to, or greater than, their respective thresholds to the SERC, the LEPC, and the local fire department.
5. The Complaint also alleged that Respondent failed to provide complete and accurate reports pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, to the SERC and the LEPC for calendar years 2003, 2004 and 2005. Specifically, during calendar years 2003, 2004 and 2005, extremely hazardous substance (“EHSs”) and hazardous chemicals were present at the Facility in amounts exceeding their reporting thresholds. Accordingly, the Facility was required by Section 312 of EPCRA, 42 U.S.C. § 11022, to furnish an Emergency and Hazardous Chemical Inventory Form containing Tier I or Tier II information by March 1, with respect to the

preceding calendar year, for the EHSs and hazardous chemicals to the SERC, the LEPC, and the local Fire Department. The Facility did not provide a complete and accurate Emergency and Hazardous Chemical Inventory Form containing Tier I or Tier II information with respect to the preceding calendar year for each hazardous chemical and EHS present at the Facility in quantities equal to, or greater than, the threshold to the SERC, the LEPC and the fire department for the calendar years 2003, 2004, and 2005. The Facility did not identify ammonia, chlorine, sodium hydroxide, sulfur dioxide, nitric acid and sulfuric acid on its form for calendar year 2003; did not identify ammonia, chlorine, sodium hydroxide, sulfur dioxide and nitric acid on its form for calendar year 2004; and did not identify ammonia, chlorine, sodium hydroxide and sulfur dioxide on its form for calendar year 2005. The Complaint alleges that MVMP violated Section 312 of EPCRA by failing to provide complete and accurate Emergency and Hazardous Chemical Inventory Forms containing Tier I or Tier II information with respect to the calendar years 2003, 2004 and 2005 to the SERC, the LEPC and the local fire department.

6. The Complaint also alleged that Respondent, which had been storing quantities of ammonia at the Facility in an amount exceeding the threshold quantity (10,000 pounds) since January 17, 2006, failed to submit a Risk Management Plan for the Facility, in violation of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7).

7. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations of the Complaint.

8. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint, but expressly waives any of its rights to contest said allegations.

9. For the purpose of this proceeding, Respondent expressly waives its rights to a hearing and to appeal this CA and accompanying Final Order (collectively, the "CA/FO") under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

10. EPA incorporates by reference the factual allegations contained in the Complaint as the Findings of Fact for this CA.

11. Based upon the Findings of Fact, EPA concludes that Respondent violated the provisions of Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to report the Release immediately to the NRC; Section 304(a) and (b) of EPCRA 42 U.S.C. § 11004(a), (b), by failing to immediately notify the SERC and the LEPC after the release; Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a follow-up report to the SERC and the LEPC as soon as practicable after the Release; Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, by failing to provide complete and accurate reports to the SERC, the LEPC and the local fire department for calendar years 2003, 2004 and 2005; and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), by failing to submit a Risk Management Plan for the Facility as soon as the threshold for ammonia present in a process was exceeded at the Facility.

12. As a result of EPA's conclusion that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304(a) and (b) and Section 304(c) of EPCRA, 42 U.S.C. § 11004(a)-(c), and Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, EPA has determined that Respondent is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. The penalty 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)*.

13. As a result of EPA's conclusion that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA has determined that Respondent is liable for a civil penalty. The CAA 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 113(e) of the CAA, 42 U.S.C. § 7413(e), including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, and such other factors as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Response Policy for Section 112(r) of the Clean Air Act (August 15, 2001)*.

14. Based on the foregoing Stipulations and Findings, the parties, by their attorneys or authorized officials, hereby agree to the following.

### **Settlement**

15. Pursuant to Section 113 of the CAA, Section 109 of CERCLA, Section 325 of EPCRA, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$71,224.00, of which \$21,438.42 is the CAA penalty, \$4,059.77 is the CERCLA penalty, and \$45,725.81 is the EPCRA penalty.

16. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the Supplemental Environmental Project.

### **Supplemental Environmental Projects**

17. The following Supplemental Environmental Projects ("SEPs") are consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, effective May 1, 1998.

18. Respondent agrees to install and operate an ammonia control system, manufactured by Frick, a division of Johnson Controls, at Respondent's Marva Maid Dairy facility located in Newport News, Virginia ("SEP A"). SEP A will include, *inter alia*, training by factory-authorized representatives. It is described further in Respondent's Supplemental Environmental Project A Proposal ("SEP A Proposal"), attached hereto as Attachment A and incorporated herein by reference. Respondent shall complete the installation of the ammonia control system within ninety (90) days of the effective date of this CA/FO.

19. Respondent also agrees to pay for 8-hour ammonia awareness training for emergency responders in the Howard County, Maryland Office of Emergency ("SEP B"). The training in SEP B will be provided by Sherrill and Associates. It is described further in Respondent's Supplemental Environmental Project B Proposal ("SEP B Proposal"), attached hereto as Attachment B and incorporated herein by reference. Respondent shall complete the ammonia awareness training by December 31, 2008.

20. Respondent's total expenditure for the SEP A shall not be less than \$169,231.65, and Respondent's total expenditure for SEP B shall not be less than \$18,000, in accordance with the specifications set forth in the SEP A Proposal and SEP B Proposal. SEP A has been valued at \$168,531.00, and SEP B has been valued at \$17,440.00 pursuant to EPA's Project Model. SEP A and SEP B have been accepted by EPA as part of this settlement. Respondent shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Reports described in Paragraph 24 below.

21. Respondent hereby certifies that, as of the date of this CA, Respondent is not required to perform or develop SEP A or SEP B by any federal, state, or local law or regulations; nor is Respondent required to perform or develop SEP A or SEP B by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for SEP A or SEP B.

22. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing SEP A and SEP B.

23. Respondent shall notify EPA, c/o Cynthia T. Weiss at the address noted in Paragraph 24, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP A and/or SEP B obligations to install if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP A and/or SEP B obligations within the time frame required by Paragraphs 18 and 19 and this paragraph. Requests for any extension must be made in writing within 48 hours of any event, the occurrence of which renders the Respondent unable to complete SEP A and/or SEP B within the required time frame ("force majeure event"), and prior to the expiration of the allowed SEP A or SEP B completion deadline. Any requests should be directed to Cynthia T.

Weiss at the address noted in Paragraph 24, below.

24. SEP Completion Reports

a. Respondent shall submit a SEP A Completion Report to EPA, c/o Cynthia T. Weiss, U.S. EPA Region III, 1650 Arch Street (Mailcode 3RC42), Philadelphia, PA 19103, within fourteen (14) days of completing the implementation of SEP A, as set forth in Paragraph 18. Respondent shall submit a SEP B Completion Report to EPA, c/o Cynthia T. Weiss, within fourteen (14) days of completing the implementation of SEP B, as set forth in Paragraph 19. The SEP A Completion Report shall contain the following information:

- (i) detailed description of SEP A as implemented;
- (ii) a description of any operating problems encountered and the solution thereto;
- (iii) a certified engineer's certification that the ammonia control system is installed correctly and running properly; and
- (iv) itemized costs.

The SEP B Completion Report shall contain the following information:

- (i) dates of training;
- (ii) number of emergency responders attending the ammonia training;
- (iii) number of emergency responders receiving certificates for completion of training; and
- (iv) itemized costs.

b. Respondent shall, by its officers, sign the reports required by this Paragraph 24 and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

c. Respondent agrees that failure to submit reports required by this Paragraph 24 shall be deemed a violation of this CA/FO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 27 below.

d. In itemizing its costs in the SEP A Completion Reports and SEP B Completion Reports, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where either report includes costs not eligible for SEP credit, those costs

must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

25. Respondent agrees that EPA may inspect the facilities at which SEP A and SEP B are implemented at any time in order to confirm that the SEP A and SEP B are being undertaken in conformity with the representations made herein.

26. EPA Acceptance of SEP Completion Reports

a. Upon receipt of the SEP A Completion Report and SEP B Completion Report, EPA may exercise one of the following options:

- (i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
- (ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
- (iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 27 herein.

b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the respective SEP Completion Reports. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of either SEP A or SEP B, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event either SEP A or SEP B is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 27 herein.

27. Stipulated Penalties

a. In the event that Respondent fails to comply with any of the terms or provisions of this CA relating to the performance of the SEP A described in paragraph 18 above, or SEP B, described in Paragraph 19 above, and/or to the extent that the actual expenditures for SEP A and/or SEP B do not equal or exceed the costs of SEP A and/or SEP B described in



paragraph 20 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (iii) below, if SEP A has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of \$134,824.00.
- (ii) Except as provided in subparagraph (iii) below, if SEP B has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of \$13,952.00.
- (iii) If either SEP A or SEP B is not completed in accordance with paragraphs 18 and 19, respectively, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iv) If SEP A is completed in accordance with paragraphs 18, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$13,482.40.
- (v) If SEP B is completed in accordance with paragraphs 19, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$1,395.20.
- (vi) If either SEP A or SEP B is completed in accordance with paragraphs 18 and 19, respectively, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (vii) For failure to submit either the SEP A Completion Report or the SEP B Completion Report required by Paragraph 24 above, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the report was originally due until the report is submitted.

b. The determination of whether SEP A and SEP B have been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP A and SEP B shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days

after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraphs 28-29 below. Five percent of the penalty shall be payable to the EPA Hazardous Substance Superfund, and ninety-five percent payable to the United States Treasury. Interest and late charges shall be paid as set forth in Paragraphs 30-33 below.

### **Payment Terms**

28. 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, Respondent must pay the civil penalty no later than 30 days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.

a. Payment of the CERCLA penalty shall be made by sending a cashier's check payable to "EPA-Hazardous Substances Superfund," in the amount of **\$4,059.77** via regular or U.S. Postal Service mail to:

U.S. EPA  
ATTN: Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Natalie Pearson, (314-418-4087)

Or via FedEx or other non-US Postal Service express mail to:

U.S. EPA  
ATTENTION: Superfund Payments  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson, (314-418-4087)

Or, to send an EFT (wire transfer):

Federal Reserve Bank of NY  
ABA No. 021030004  
Account No. 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"

b. Payment of the EPCRA and CAA penalties shall be made by sending a cashier's check in the amount of \$67,164.23 made payable to the "United States Treasury." If the payment of the EPCRA and CAA penalty is sent via regular or US Postal Service express mail, the payment should be mailed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Natalie Pearson (314-418-4087)

If the payment of the EPCRA and CAA penalty is sent via FedEx or other non-US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson, (314-418-4087)

Payment by wire transfer/EFT 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 wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Payment via Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express):

PNC Bank  
ABA = 051036706  
Environmental Protection Agency  
Account 310006  
CTX Format  
Transaction Code 22 - checking  
808 17<sup>th</sup> Street, NW

Washington, DC 20074  
Contact for ACH: Jessie White 301 887-6548

29. The Respondent shall note on the penalty payment checks the title and docket numbers of this case. The Respondent shall submit copies of the checks to the following persons:

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

30. 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, as well as 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 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.

31. 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 date on which such interest begins to accrue. 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).

32. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of 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.

33. 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. 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. 31 C.F.R. § 901.9(d).

34. Failure by the Respondent to pay the \$71,224.00 penalty assessed by the FO in full by the final due date, or to pay any stipulated penalties assessed under this CA/FO, may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, 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**

35. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

36. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112 of the CAA, 42 U.S.C. § 7412, Section 103 of CERCLA, 42 U.S.C. § 9603, or Sections 304, 311 or 312 of EPCRA, 42 U.S.C. § 11004, or any regulations promulgated thereunder.

37. This CA/FO resolves only those civil claims which are alleged in the Complaint. 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 which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, Complainant reserves any rights and remedies available to it under the CAA, CERCLA and EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

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

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

FOR MARYLAND & VIRGINIA MILK PRODUCERS COOPERATIVE ASSOCIATION,  
INC.

Allen K. O'Hara  
SIGNATURE

3/18/08  
DATE

Name: *Allen K. O'Hara*

Title: *Secretary*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

K. Horeben for      3/21/08  
James J. Burke, Director      DATE  
Hazardous Site Cleanup Division

# ATTACHMENT A





"Waddington, Richard"  
<RWaddington@wtplaw.com  
>  
01/25/2008 02:30 PM

To: Cynthia Weiss/R3/USEPA/US@EPA  
cc: Michelle Price-Fay/R3/USEPA/US@EPA  
bcc:  
Subject: RE: MD & Va Milk Producers

Cynthia: Maryland & Virginia's response is set forth below:

\*\*\*\*\*

From the date I issue a P.O. to the contractor we are looking at a window of 80 – 90 days for full implementation of the system.

The proposal for the system is as follows. This is a complete control system manufactured by Frick, a division of Johnson Controls, a leader in the refrigeration industry. The scope of this system is not only full spectrum, but interfaces with a processor that is web based, allowing for full interface with all components in our existing ammonia system. This system, once installed, will allow for operation, monitoring and detection of each part of our system, by component from a central location and with the addition of a dialer interface, will allow for remote notification of any incident which would require immediate attention. This would also allow for remote viewing and operation of the ammonia system via internet access incorporated into the control system logic. Additionally the system would be integrated in the event of a release to isolate the source of the ammonia, without shutting down the entire system, unless that is required to control the release. Updates and additions to this system would be supplied by Johnson Controls and Frick at no additional charge to the owner, unless they would require additional components. Training by factory authorized representatives is included in this proposal as well, and will be completed as soon as the system is operational. Ammonia sensors will be provided by Manning, and will be located throughout the system to monitor all aspects of the refrigeration system. This system has expansion capability should that be required, and can be utilized to monitor CO2 if so desired by the end user.

Richard F. Waddington, Esq.  
Whiteford, Taylor & Preston, L.L.P.  
7 St. Paul Street  
Baltimore, MD 21202  
(410) 347-8712  
fax (410) 223-3492

**From:** Weiss.Cynthia@epamail.epa.gov [mailto:Weiss.Cynthia@epamail.epa.gov]  
**Sent:** Friday, January 25, 2008 9:48 AM  
**To:** Waddington, Richard  
**Cc:** Price-Fay.Michelle@epamail.epa.gov  
**Subject:** MD & Va Milk Producers

Richard,

The SEP is acceptable to EPA.

We need two things in order to move forward:

- (1) a schedule for implementation of the new system. How much time would the company need to install it and get it running, using as a starting point the date the CAFO is signed by the Regional Judicial Officer? 30 days, 60 days, 90 days?
- (2) a short summary of the SEP. I shouldn't attach the whole PowerPoint presentation to the CAFO. Can

you come up with a one-paragraph summary and send it to me via email?

Thanks.

Cynthia T. Weiss (3RC42)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: (215) 814-2659 Fax: (215) 814-2603  
weiss.cynthia@epa.gov

This transmission contains information from the law firm of Whiteford, Taylor & Preston LLP which may be confidential and/or privileged. The information is intended to be for the exclusive use of the planned recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

CAPITAL PROJECT WORKSHEET

TITLE: Install Ammonia Control System

LOCATION: Marva Maid Dairy, Newport News

Project #

|                         |   |               |
|-------------------------|---|---------------|
| ENGINEERING             | 1. ARCHITECT                                      |               |
|                         | 2. CIVIL  |               |
|                         | 3. MECHANICAL                                     |               |
|                         | 4. PERMITS  |               |
|                         | 5. ZONING   |               |
|                         | 6. OTHER  |               |
|                         | SUB TOTAL   | \$ -          |
|                         | TAX   | \$ -          |
|                         | TOTAL   | \$ -          |
| EQUIPMENT<br><br>(LIST) | 1. Ammonia Control System                         | \$ 155,373.00 |
|                         | 2. Factory Included Training (4 hours @ \$250.00) | \$ 1,000.00   |
|                         | 3.  |               |
|                         | 4.  |               |
|                         | 5.  |               |
|                         | 6.  |               |
|                         | 7.  |               |
|                         | 8.  |               |
|                         | 9.  |               |
|                         | 10.   |               |
|                         | 11.   |               |
|                         | 12.   |               |
|                         | 13.   |               |
|                         |   | SUB TOTAL     |
|                         | TAX   | \$ 7,818.65   |
|                         | TOTAL   | \$ 164,191.65 |

|             |                      |             |             |
|-------------|----------------------|-------------|-------------|
| ELECTRICAL  | 1. PERMITS           |             |             |
|             | 2. QUOTE (Estimated) |             | \$3,000.00  |
|             |                      | SUB TOTAL   | \$ 3,000.00 |
|             |                      | TAX         | \$ 150.00   |
|             |                      | TOTAL       | \$ 3,150.00 |
| MECHANICAL  | 1. CONSTRUCTION      |             |             |
|             | 2. MASONRY           |             |             |
|             | 3. PLUMBING          |             |             |
|             | 4. DEGRAGATION       |             |             |
|             | 5. PERMITS           |             |             |
|             | 6. OTHER             |             |             |
|             |                      | SUB TOTAL   | \$ -        |
|             | TAX                  | \$ -        |             |
|             | TOTAL                | \$ -        |             |
| RIGGING     | 1.                   |             |             |
|             | 2.                   |             |             |
|             | 3.                   |             |             |
|             |                      | SUB TOTAL   | \$ -        |
|             | TAX                  | \$ -        |             |
|             | TOTAL                | \$ -        |             |
| CONTINGENCY | 1.                   |             | \$ 1,800.00 |
|             | 2.                   |             |             |
|             |                      | SUB TOTAL   | \$ 1,800.00 |
|             |                      | TAX         | \$ 90.00    |
|             | TOTAL                | \$ 1,890.00 |             |

|         |       |           |      |
|---------|-------|-----------|------|
| FREIGHT | 1.    |           |      |
|         | 2.    |           |      |
|         | 3.    |           |      |
|         | 4.    |           |      |
|         | 5.    |           |      |
|         |       | SUB TOTAL | \$ - |
|         |       | TAX       | \$ - |
|         | TOTAL | \$ -      |      |

|                                       |               |
|---------------------------------------|---------------|
| TOTAL COST OF PROJECT INCLUDING TAXES | \$ 169,231.65 |
|---------------------------------------|---------------|

|                           |      |
|---------------------------|------|
| ESTIMATED COMPLETION DATE | 2008 |
|---------------------------|------|

|  |                 |
|--|-----------------|
| SUBMITTED BY: Dan Connelly<br>Chief Engineer<br>Marva Maid Dairy | DATE: 17-Aug-07 |
|--|-----------------|

|                    |             |
|--------------------|-------------|
| APPROVED BY: _____ | DATE: _____ |
|--------------------|-------------|

# ATTACHMENT B

# Sherrill & Associates

5411 New Castle Street  
Gainesville, GA 30507

## Proposal

| Date      | Proposal No. |
|-----------|--------------|
| 2/26/2008 | 1144         |

**Name/Address**

Maryland & Virginia Milk Producers Coop.  
Randall M Fischer  
P.O. Box 184  
Leishear Road  
Laurel, MD 20725

**Project**

| Item            | Description  | Qty | U/M    | Rate   | Total     |
|-----------------|--|-----|--------|--------|-----------|
| NH3 Awarenes... | 8 hour ammonia awareness training for Fire, Emergency Services and other first response personnel. | 60  | Person | 300.00 | 18,000.00 |

**Total**

Thank you for the opportunity to provide a proposal.

I hereby accept and agree to the above proposal. I understand that unless otherwise stated above payment for training is expected prior to the beginning of said training. Payment for other services is due upon completion of agreed work.

Signature \_\_\_\_\_



5411 New Castle Street  
Gainesville, GA 30507

# Proposal

| Date      | Proposal No. |
|-----------|--------------|
| 2/26/2008 | 1144         |

**Name/Address**

Maryland & Virginia Milk Producers Coop.  
Randall M Fischer  
P.O. Box 184  
Leishear Road  
Laurel, MD 20725

| Project |  |     |     |              |       |
|---------|--|-----|-----|--------------|-------|
| Item    | Description  | Qty | U/M | Rate         | Total |
|         | <p>Training is to be provided in three sessions on three consecutive days during November 2008. Dates and times to be determined through consultation between Sherrill &amp; Associates with Howard County Emergency Services and Maryland Virginia Milk Laurel, LLC. Payment due in advance of classes. Each attendee to receive a copy of "Ammonia Safety, What You Don't Know Can (and will) Hurt You" and other handout material. A quiz will be given at the conclusion of each session and those scoring 70% or higher will receive a certificate of successful completion of 8 hours of ammonia awareness training. Specific wording of certificates to be determined after consultation with Howard County Emergency Services. Training facility to be provided by Howard County Emergency Services or Maryland Virginia Milk.</p> <p>(Note: Sherrill &amp; Associates will need accurate rosters of names of attendees in advance of the sessions in order to prepare certificates or certificates will be delivered to Howard county within five days of the last class)</p> |     |     |              |       |
|         |  |     |     | <b>Total</b> |       |

Thank you for the opportunity to provide a proposal.

I hereby accept and agree to the above proposal. I understand that unless otherwise stated above payment for training is expected prior to the beginning of said training. Payment for other services is due upon completion of agreed work.

Signature \_\_\_\_\_





5411 New Castle Street  
Gainesville, GA 30507

# Proposal

| Date      | Proposal No. |
|-----------|--------------|
| 2/26/2008 | 1144         |

Name/Address

Maryland & Virginia Milk Producers Coop.  
Randall M Fischer  
P.O. Box 184  
Leishear Road  
Laurel, MD 20725

| Project      |   |     |     |      |                    |
|--------------|---|-----|-----|------|--------------------|
| Item         | Description   | Qty | U/M | Rate | Total              |
|              | Topics and areas of discussion to include:<br>Review of Basic Ammonia Characteristics<br>Uses of Ammonia – Past, Present, and Future<br>How is Ammonia Made<br>Hazards of Ammonia – Lessons Learned with Releases/Accidents<br>Health Effects of Ammonia, recommended Medical Treatment<br>Personal Protective Equipment (PPE)<br>Entry Monitoring<br>Emergency Response Hazard and Risk Assessment<br>Off Loading Considerations<br>Ammonia Release Formations –Four Formations to Remember<br>Risk Assessment of Each Formation<br>Ammonia Spill/Release Actions- what works best when?<br>Positive Pressure Ventilation<br>Air Decontamination |     |     |      |                    |
| <b>Total</b> |   |     |     |      | <b>\$18,000.00</b> |

Thank you for the opportunity to provide a proposal.

I hereby accept and agree to the above proposal. I understand that unless otherwise stated above payment for training is expected prior to the beginning of said training. Payment for other services is due upon completion of agreed work.

Signature \_\_\_\_\_

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

|                                      |   |   |
|--------------------------------------|---|---|
| <b>In the Matter of:</b>             | ) | <b>EPA Docket Nos.:</b>                       |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>CAA-03-2007-0291</b>                       |
| <b>Producers Cooperative</b>         | ) | <b>CERC-03-2007-0291</b>                      |
| <b>Association, Incorporated</b>     | ) | <b>EPCRA-03-2007-0291</b>                     |
| <b>1985 Isaac Newton Square West</b> | ) |   |
| <b>Reston, VA 20190,</b>             | ) |   |
|                                      | ) |   |
| <b>Respondent,</b>                   | ) | <b>Proceedings Pursuant to Sections</b>       |
|                                      | ) | <b>112(r)(7), 113(a)(3) and 113(d) of the</b> |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>Clean Air Act, as amended, (“CAA”),</b>    |
| <b>Producers Cooperative</b>         | ) | <b>42 U.S.C. §§ 7412(r)(7), 7413(a)(3),</b>   |
| <b>Association, Incorporated,</b>    | ) | <b>7413(d), Sections 103 and 109 of the</b>   |
| <b>8321 Leishear Road</b>            | ) | <b>Comprehensive Environmental</b>            |
| <b>Laurel, Maryland 20723,</b>       | ) | <b>Response, Compensation, and</b>            |
|                                      | ) | <b>Liability Act, as amended, 42 U.S.C.</b>   |
| <b>Facility.</b>                     | ) | <b>§§ 9603 and 9609, and Sections 304,</b>    |
|                                      | ) | <b>311, 312 and 325 of the Emergency</b>      |
|                                      | ) | <b>Planning and Community Right-to-</b>       |
|                                      | ) | <b>Know Act, 42 U.S.C. §§ 11004, 11021,</b>   |
|                                      | ) | <b>11022 and 11045.</b>                       |
|                                      | ) |   |

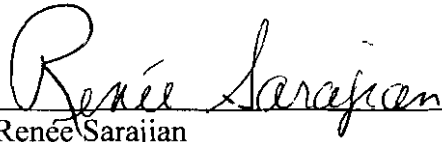
**FINAL ORDER**

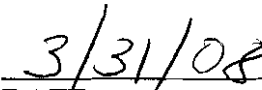
Pursuant to Sections 103 and 109 of CERCLA, 42 U.S.C. §§ 9603, 9609, Sections 304, 311, 312 and 325 of EPCRA, 42 U.S.C. § 11001, 11021, 11022, and 11045, and Sections 112 and 113 of the CAA, 42 U.S.C. §§ 7412, 7413, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113 of the CAA, 42 U.S.C. § 7413, 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

  
\_\_\_\_\_  
Renee Sarajian  
Regional Judicial Officer  
EPA, Region III

  
\_\_\_\_\_  
DATE

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

11/30/07 11:29  
EPA Region III, Philadelphia, PA

|                                      |   |  |
|--------------------------------------|---|--|
| <b>In the Matter of:</b>             | ) | <b>EPA Docket Nos.:</b>                      |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>CAA-03-2007-0291</b>                      |
| <b>Producers Cooperative</b>         | ) | <b>CERC-03-2007-0291</b>                     |
| <b>Association, Incorporated</b>     | ) | <b>EPCRA-03-2007-0291</b>                    |
| <b>1985 Isaac Newton Square West</b> | ) |  |
| <b>Reston, VA 20190,</b>             | ) |  |
|                                      | ) |  |
| <b>Respondent,</b>                   | ) | <b>Proceedings under Sections 112(r)(7),</b> |
|                                      | ) | <b>113(a)(3) and 113(d) of the Clean Air</b> |
| <b>Maryland &amp; Virginia Milk</b>  | ) | <b>Act, as amended, ("CAA"), 42 U.S.C.</b>   |
| <b>Producers Cooperative</b>         | ) | <b>§§ 7412(r)(7), 7413(a)(3), 7413(d),</b>   |
| <b>Association, Incorporated,</b>    | ) | <b>Sections 103 and 109 of the</b>           |
| <b>8321 Leishear Road</b>            | ) | <b>Comprehensive Environmental</b>           |
| <b>Laurel, Maryland 20723,</b>       | ) | <b>Response, Compensation, and</b>           |
|                                      | ) | <b>Liability Act, as amended, 42 U.S.C.</b>  |
| <b>Facility.</b>                     | ) | <b>§§ 9603 and 9609, and Sections 304,</b>   |
|                                      | ) | <b>311, 312 and 325 of the Emergency</b>     |
|                                      | ) | <b>Planning and Community Right-to-</b>      |
|                                      | ) | <b>Know Act, 42 U.S.C. §§ 11004, 11021,</b>  |
|                                      | ) | <b>11022 and 11045.</b>                      |
|                                      | ) |  |

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Consent Agreement and Final Order, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order, were sent to:

Via certified mail, return receipt requested  
Richard F. Waddington, Esq.  
Whiteford, Taylor & Preston, L.L.P.  
7 St. Paul Street  
Baltimore, MD 21202

Via pouch mail:  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

MAR 31 2008

Date

*Cynthia Weiss*

Cynthia T. Weiss (3RC42)  
Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2659