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8 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
9 75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105  
10

11 In the Matter of: )  
12 HOLLANDIA DAIRY, INC. ) Docket No. EPCRA-9-2007-0004  
13 Respondent. ) CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 and 22.18

14 I. CONSENT AGREEMENT

15 The United States Environmental Protection Agency, Region IX  
16 ("EPA"), and Hollandia Dairy, Inc. ("Respondent") agree to settle  
17 this matter and consent to the entry of this Consent Agreement  
18 and Final Order ("CAFO"), which simultaneously commences and  
19 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b)  
20 and 22.18(b).  
21

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action instituted  
24 against Respondent pursuant to Section 325(c) of Title III of the  
25 Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001  
26 et seq., also known as the Emergency Planning and Community  
27 Right-to-Know Act of 1986 ("EPCRA"), for violation of Section 313  
28 of EPCRA, 42 U.S.C. § 11023, and the federal regulations

1 promulgated to implement Section 313 at 40 C.F.R Part 372.

2 2. Complainant is the Director of the Communities and  
3 Ecosystems Division, EPA, Region IX, who has been duly delegated  
4 the authority to initiate this action and to sign a consent  
5 agreement settling this action.

6 3. Respondent is a California corporation located at 622  
7 East Mission Road in San Marcos, California.

8 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

9 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§  
10 11023 and 11048, EPA promulgated the Toxic Chemical Release  
11 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

12 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R. §  
13 372.30, provides that an owner or operator of a facility that  
14 meets the criteria set forth in EPCRA Section 313(b) and 40  
15 C.F.R. § 372.22, is required to submit annually to the  
16 Administrator of EPA and to the State in which the facility is  
17 located, no later than July 1st of each year, a toxic chemical  
18 release inventory reporting form (hereinafter "Form R") for each  
19 toxic chemical listed under 40 C.F.R. § 372.65 that was  
20 manufactured, processed or otherwise used at the facility during  
21 the preceding calendar year in quantities exceeding the  
22 thresholds established under EPCRA Section 313(f) and 40 C.F.R. §  
23 372.25.

24 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide  
25 that the requirements of Section 313(a) and 40 C.F.R. § 372.30  
26 apply to an owner and operator of a facility that has 10 or more  
27

1 full-time employees; that is in a Standard Industrial  
2 Classification major group codes 10 (except 1011, 1081, and  
3 1094), 12 (except 1241), 20 through 39; industry codes 4911,  
4 4931, or 4939 (limited to facilities that combust coal and/or oil  
5 for the purpose of generating power for distribution in  
6 commerce), or 4953 (limited to facilities regulated under the  
7 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.  
8 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities  
9 primarily engaged in solvent recovery services on a contract or  
10 fee basis); and that manufactures, processes, or otherwise uses  
11 one or more toxic chemicals listed under Section 313(c) of EPCRA  
12 and 40 C.F.R. § 372.65 in quantities in excess of the applicable  
13 thresholds established under EPCRA Section 313(f) and 40 C.F.R. §  
14 372.25.

15 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40  
16 C.F.R. Part 19 authorize EPA to assess a penalty of up to \$27,500  
17 for each violation of Section 313 of EPCRA that occurred on or  
18 after January 31, 1997 but before March 15, 2004 and up to  
19 \$32,500 for each violation of Section 313 of EPCRA that occurred  
20 on or after March 15, 2004.

### 21 C. ALLEGATIONS

22 8. Respondent is a "person" as that term is defined by  
23 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

24 9. At all times relevant to this matter, Respondent was an  
25 owner and operator of a "facility," as that term is defined by  
26 Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §  
27

1 372.3, which is located at 622 East Mission Road in San Marcos,  
2 California (hereinafter "Facility").

3 10. At all times relevant to this matter, the Facility had  
4 10 or more "full-time employees," as that term is defined at 40  
5 C.F.R. § 372.3.

6 11. The Facility is classified in Standard Industrial  
7 Classification code 2026, which falls under the general category  
8 of Food and Kindred Products and within the Standard Industrial  
9 Classification code 20.

10 12. During calendar year 2005, Respondent otherwise used  
11 approximately 15,118 pounds of Nitric Acid, a chemical listed  
12 under 40 C.F.R. § 372.65.

13 13. The quantity of Nitric Acid that Respondent otherwise  
14 used at the Facility during calendar year 2005 exceeds the  
15 established threshold of 10,000 pounds set forth at 40 C.F.R. §  
16 372.25(b).

17 14. Respondent failed to submit a Form R to the EPA  
18 Administrator and to the State of California on or before July 1,  
19 2006 for calendar year 2005.

20 15. Respondent's failure to submit a timely Form R for  
21 Nitric Acid that Respondent otherwise used at the Facility during  
22 calendar year 2005 constitutes a violation of Section 313 of  
23 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

24 16. The EPA Enforcement Response Policy for EPCRA Section  
25 313 dated August 10, 1992 sets forth a penalty of EIGHT THOUSAND,  
26 EIGHT HUNDRED AND TWENTY-FVE DOLLARS (\$8,825) for this violation.

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D. RESPONDENT'S ADMISSIONS

17. 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

18. 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

19. Respondent agrees to the assessment of a penalty in the amount of SIX THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT DOLLARS (\$6,178) as final settlement of the civil claims against Respondent arising under EPCRA Section 313 as alleged in Section I.C of this CAFO.

20. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment

1 shall be made by cashier's or certified check payable to the  
2 "Treasurer, United States of America," and shall be sent by  
3 certified mail, return receipt requested, to the following  
4 address:

5 Mellon Bank  
6 U.S. EPA Region IX Hearing Clerk  
7 P.O. Box 360863M  
8 Pittsburgh, PA 15251

9 The payment shall be accompanied by a transmittal letter  
10 identifying the case name, the case docket number, and this CAFO.  
11 Concurrent with delivery of the payment of the penalty,  
12 Respondent shall send a copy of the check and transmittal letter  
13 to the following addresses:

14 Regional Hearing Clerk  
15 Office of Regional Counsel (ORC-1)  
16 U.S. Environmental Protection Agency, Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105

19 Mariela Lopez  
20 Toxics Office (CED-4)  
21 U.S. Environmental Protection Agency, Region IX  
22 75 Hawthorne Street  
23 San Francisco, CA 94105

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

27 22. If Respondent fails to pay the assessed civil  
28 administrative penalty specified in Paragraph 19 by the deadline  
specified in Paragraph 20, then Respondent shall pay to EPA the  
stipulated penalty of EIGHT THOUSAND, EIGHT HUNDRED AND TWENTY-  
FIVE DOLLARS (\$8,825) rather than the assessed penalty, which  
shall be immediately due and payable. In addition, failure to

1 pay the civil administrative penalty by the deadline specified in  
2 Paragraph 20 may lead to any or all of the following actions:

3 a. The debt being referred to a credit reporting agency, a  
4 collection agency, or to the Department of Justice for  
5 filing of a collection action in the appropriate United  
6 States District Court. 40 C.F.R. §§ 13.13, 13.14, and  
7 13.33. In any such collection action, the validity, amount,  
8 and appropriateness of the assessed penalty and of this CAFO  
9 shall not be subject to review.

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

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

21 d. In accordance with the Debt Collection Act of 1982 and  
22 40 C.F.R. Part 13 interest, penalties charges, and  
23 administrative costs will be assessed against the  
24 outstanding amount that Respondent owes to EPA for  
25 Respondent's failure to pay the civil administrative penalty  
26 by the deadline specified in Paragraph 20. Interest will be  
27 assessed at an annual rate that is equal to the rate of  
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1 current value of funds to the United States Treasury (i.e.,  
2 the Treasury tax and loan account rate) as prescribed and  
3 published by the Secretary of the Treasury in the Federal  
4 Register and the Treasury Fiscal Requirements Manual  
5 Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will  
6 be assessed monthly at a rate of 6% per annum. 40 C.F.R.  
7 § 13.11(c). Administrative costs for handling and  
8 collecting Respondent's overdue debt will be based on either  
9 actual or average cost incurred, and will include both  
10 direct and indirect costs. 40 C.F.R. § 13.11(b). In  
11 addition, if this matter is referred to another department  
12 or agency (e.g., the Department of Justice, the Internal  
13 Revenue Service), that department or agency may assess its  
14 own administrative costs, in addition to EPA's  
15 administrative costs, for handling and collecting  
16 Respondent's overdue debt.

17 G. RETENTION OF RIGHTS

18 23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only  
19 resolves Respondent's liability for federal civil penalties for  
20 the violations and facts specifically alleged in Section I.C of  
21 this CAFO. Nothing in this CAFO is intended to or shall be  
22 construed to resolve (i) any civil liability for violations of  
23 any provision of any federal, state, or local law, statute,  
24 regulation, rule, ordinance, or permit not specifically alleged  
25 in Section I.C of this CAFO; or (ii) any criminal liability. EPA  
26 specifically reserves any and all authorities, rights, and  
27 remedies available to it (including, but not limited to,

1 injunctive or other equitable relief or criminal sanctions) to  
2 address any violation of this CAFO or any violation not  
3 specifically alleged in Section I.C of this CAFO.

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

8 H. ATTORNEYS' FEES AND COSTS

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

11 I. EFFECTIVE DATE

12 26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and  
13 22.31(b), this CAFO shall be effective on the date that the final  
14 order contained in this CAFO, having been approved and issued by  
15 either the Regional Judicial Officer or Regional Administrator,  
16 is filed.

17 J. BINDING EFFECT


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

23 28. The provisions of this CAFO shall apply to and be  
24 binding upon Respondent and its officers, directors, employees,  
25 agents, trustees, servants, authorized representatives,  
26 successors, and assigns.

1 FOR RESPONDENT, HOLLANDIA DAIRY, INC.

2

~~5-22-07~~

  
General Manager  
HOLLANDIA DAIRY, INC.

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5 FOR COMPLAINANT, EPA REGION IX:

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6-25-2007

DATE

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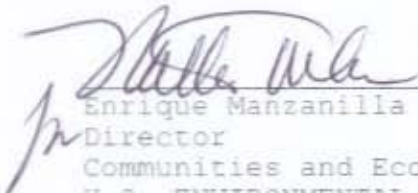
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In the Matter of Hollandia Dairy, Inc.,

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Docket No. EPCRA-9-2007-00

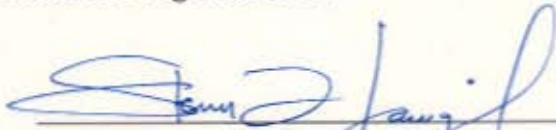
  
Enrique Manzanilla  
Director  
Communities and Ecosystems Division  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION IX

1  
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the  
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-9-  
6 2007-00006 be entered, and that Respondent shall pay a civil  
7 administrative penalty in the amount of SIX THOUSAND, ONE HUNDRED  
8 AND SEVENTY-EIGHT DOLLARS (\$6,178) and comply with the terms and  
9 conditions set forth in the Consent Agreement.

10 06/29/07  
11 DATE

12   
13 STEVEN L. JAWGIEL  
14 Regional Judicial Officer  
15 U.S. Environmental Protection  
16 Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-09-2007-00 ) against Hollandia Dairy, was filed this day 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 same was sent to Respondent at the following address:

Lee Hodge  
General Manager  
Hollandia Dairy  
622 E. Mission Road  
San Marcos, CA 92069

Certified Mail No. 7005 3110 0002 8247 6808

Danielle E. Carr

Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX

Date June 29, 2007