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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
15 I. CONSENT AGREEMENT

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

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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
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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

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.
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1 FOR RESPONDENT, HOLLANDIA DAIRY, INC.

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~~5-22-07~~


General Manager
HOLLANDIA DAIRY, INC.

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FOR COMPLAINANT, EPA REGION IX:

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6-25-2007

DATE

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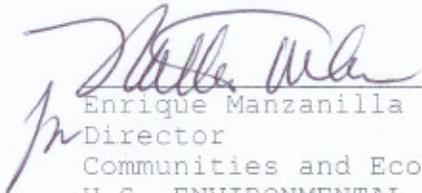
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In the Matter of Hollandia Dairy, Inc.,

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Docket No. EPCRA-9-2007-00

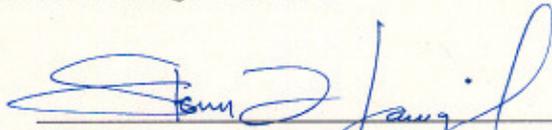

Enrique Manzanilla
Director
Communities and Ecosystems Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

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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