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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SORRENTO LACTALIS, INC.,  
Nampa, Idaho,

Respondent.

**DOCKET NO. CWA-10-2016-0131**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Sorrento Lactalis, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the Act and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

### Statutory and Regulatory Background

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3.2. EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions that EPA determines are necessary. CWA § 402, 33 U.S.C. § 1342.

3.3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, in part, “rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

3.5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States,” which include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, [or] conduit... from which pollutants are or may be discharged.”

3.7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include a corporation, partnership, or association.

#### **Factual Background**

3.8. At all times relevant to this action, Respondent was a corporation organized under the laws of the State of Delaware, and is therefore a “person” within the meaning of the Act. CWA § 502(5), 33 U.S.C. § 1362(5).

3.9. At all times relevant to this action, Respondent owned a facility located at 4912 East Franklin Road in Nampa, Idaho (“Facility”), where Respondent manufactures cheese and whey products for human consumption.



3.10. Respondent's manufacturing of cheese products places the company within North American Industry Classification System ("NAICS") code 311513.

3.11. At all times relevant to this action, Respondent was authorized to discharge treated wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID0028037 ("Permit"). The Permit became effective on November 1, 2005, and expired on October 31, 2010. A permit application was received by EPA on May 3, 2010, and the Agency administratively extended the Permit on October 27, 2010, pursuant to 40 C.F.R. § 122.6.

3.12. The Facility discharges pollutants from Outfall 001 to the Purdam Drain. Outfall 001 is a "point source" as defined in 40 C.F.R. § 122.2

3.13. The Purdam Drain flows to Mason Creek and then into the Boise River, a tributary to the Snake River. The Snake River is currently used, was used in the past, or may be susceptible to use, in interstate or foreign commerce, and thus the Purdam Drain is a "waters of the United States" as defined in 40 C.F.R. § 122.2, and a "navigable water" as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

#### **Effluent Violations**

3.14. Part I.B. of the Permit establishes effluent limits for the discharges from Outfall 001. These effluent limits include, but are not limited to, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), *Escherichia coli* ("*E. coli*"), and phosphorus.

3.15. Part III.B. of the Permit requires Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report ("DMR").

3.16. When a permittee exceeds a monthly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the month in which the exceedance

occurred that the facility was discharging effluent. When a permittee exceeds a weekly average effluent limit, the permittee is deemed to be in violation of the effluent limit for each day of the week in which the exceedance occurred that the facility was discharging effluent. When a permittee exceeds a daily maximum effluent limit, the exceedance is counted as one violation. Since July 2011, Respondent has had 349 violations of the effluent limits set forth in the Permit.

3.17. Part I.B. of the Permit specifies that the monthly average concentration of BOD in the effluent shall not exceed 10 mg/L. Since July 2011, Respondent has exceeded the monthly average concentration for BOD 2 times, constituting 61 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 30                   |
| July 2015          | 31                   |

3.18. Part I.B. of the Permit specifies that the daily maximum concentration of BOD in the effluent shall not exceed 20 mg/L. Respondent's DMRs since July 2011, indicate that the Facility has exceeded the daily maximum concentration for BOD 2 times, constituting 2 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 1                    |
| July 2015          | 1                    |

3.19. Part I.B. of the Permit specifies that the monthly average loading of BOD in the effluent shall not exceed 42 lbs/day. Since July 2011, Respondent has exceeded the monthly average loading for BOD 2 times, constituting 61 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 30                   |

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| July 2015          | 31                   |

3.20. Part I.B. of the Permit specifies that the daily maximum loading of BOD in the effluent shall not exceed 84 lbs/day. Since July 2011, Respondent has exceeded the daily maximum loading for BOD 2 times, constituting 2 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 1                    |
| July 2015          | 1                    |

3.21. Part I.B. of the Permit specifies that the monthly average concentration of *E. coli* bacteria in the effluent shall not exceed 126 counts per 100 ml. Since July 2011, Respondent has exceeded the monthly average concentration for *E. coli* bacteria 1 time, constituting 30 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 30                   |

3.22. Part I.B. of the Permit specifies that the instantaneous maximum concentration of *E. coli* bacteria in the effluent shall not exceed 406 counts per 100 ml. Since July 2011, Respondent has exceeded the instantaneous maximum concentration for *E. coli* bacteria 8 times, constituting 8 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| July 2011          | 1                    |
| December 2014      | 1                    |
| June 2015          | 1                    |
| July 2015          | 1                    |



| Month of Violation | Number of Violations |
|--------------------|----------------------|
| August 2015        | 1                    |
| October 2015       | 1                    |
| April 2016         | 1                    |
| June 2016          | 1                    |

3.23. Part I.B. of the Permit specifies that the monthly average loading of total phosphorus in the effluent shall not exceed 0.29 lbs/day. Since July 2011, Respondent has exceeded the monthly average loading for total phosphorus 1 time, constituting 31 violations. The violations are as follows:

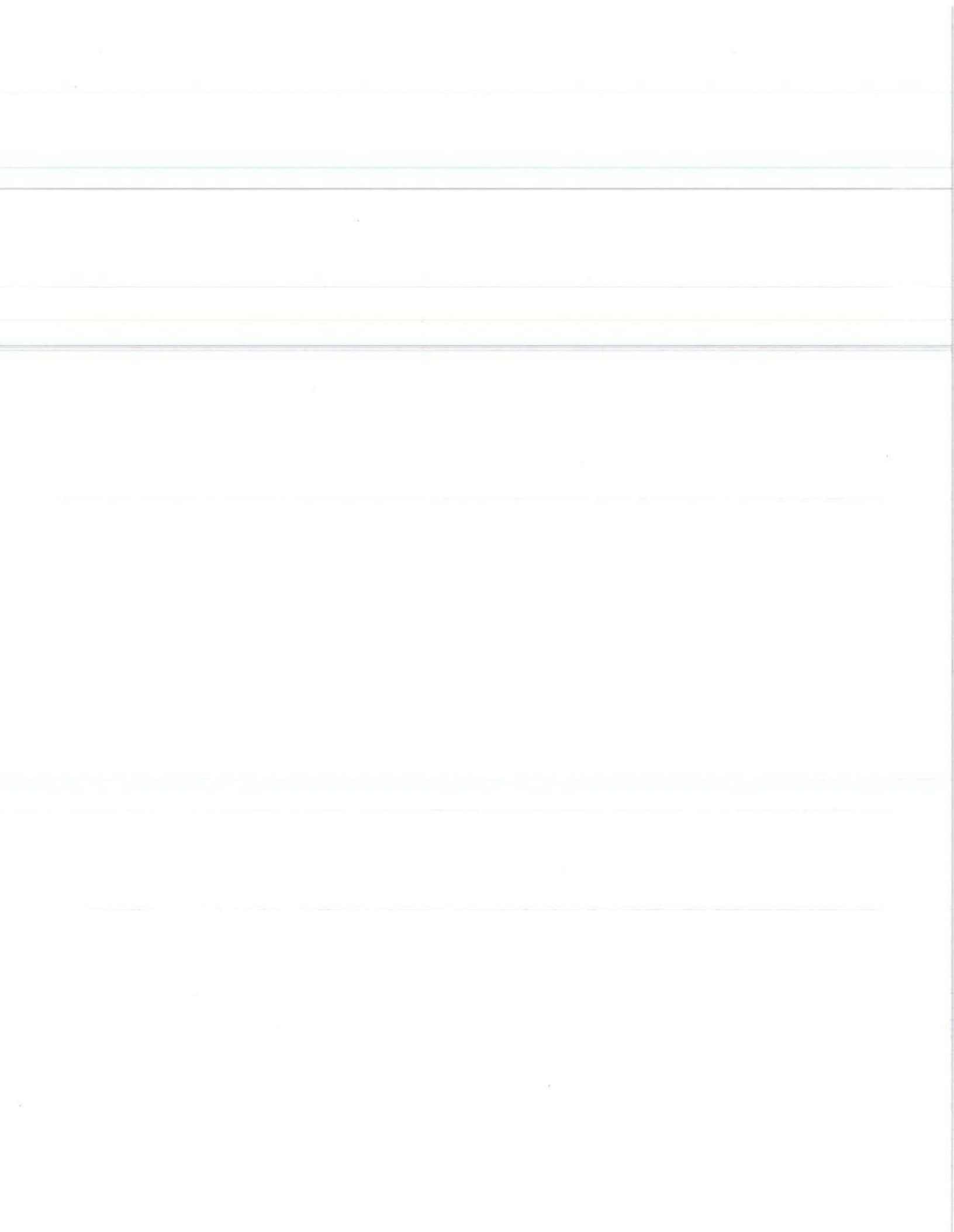
| Month of Violation | Number of Violations |
|--------------------|----------------------|
| July 2013          | 31                   |

3.24. Part I.B. of the Permit specifies that the monthly average concentration of total phosphorus in the effluent shall not exceed 0.07 mg/L. Since July 2011, Respondent has exceeded the monthly average concentration for total phosphorus 1 time, constituting 30 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 30                   |

3.25. Part I.B. of the Permit specifies that the monthly average concentration of TSS in the effluent shall not exceed 13 mg/L. Since July 2011, Respondent has exceeded the monthly average concentration for TSS 1 time, constituting 30 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 30                   |





3.26. Part I.B. of the Permit specifies that the daily maximum concentration of TSS in the effluent shall not exceed 25 mg/L. Since July 2011, Respondent has exceeded the daily maximum concentration for TSS 2 times, constituting 2 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| June 2015          | 1                    |
| November 2015      | 1                    |

3.27. Part I.B. of the Permit specifies that the monthly average loading of TSS in the effluent shall not exceed 53 lbs/day. Since July 2011, Respondent has exceeded the monthly average loading for TSS 3 times, constituting 91 violations. The violations are as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| December 2013      | 31                   |
| September 2014     | 30                   |
| June 2015          | 30                   |

3.28. Part I.B. of the Permit specifies that the daily maximum loading of TSS in the effluent shall not exceed 106 lbs/day. Since July 2011, Respondent has exceeded the daily maximum loading for TSS 1 time, constituting 1 violation. The violation is as follows:

| Month of Violation | Number of Violations |
|--------------------|----------------------|
| December 2013      | 1                    |

3.29. Respondent's discharges in excess of the effluent limits contained in the Permit were not authorized by an NPDES permit, and therefore, were in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

## Non-Effluent Violation

3.30. Part II.A of the Permit establishes an obligation for Respondent to develop a Quality Assurance Plan (“QAP”) for all monitoring required by the Permit, and specifies minimum requirements for the contents of the plan.

3.31 At the time of inspection, on July 23, 2015, Respondents was relying on a document titled “Sampling and Analysis Plan, Sorrento Lactalis WWTP, Nampa Idaho,” dated February 7, 2010, as a substitute for the QAP. Respondent’s Sampling and Analysis Plan fails to satisfy the requirements of the QAP. More specifically, the Sampling and Analysis Plan does not address analytical methods, analytical detection and quantitation limits, type and number of quality assurance field samples, precision and accuracy requirements, sample shipping methods, or laboratory data delivery requirements for parameters monitored at the discharge to Outfall 001 as required by the Permit; nor does the Sampling and Analysis Plan include a map indicating the location of each sampling point, a description of the qualification and training of personnel, or information on the laboratories used by the facility as required by the Permit.

3.32. On July 24, 2015, Respondent provided EPA with an updated QAP for the WWTP. The updated plan is similarly silent regarding holding times, analytical methods, analytical detection and quantitation limits, type and number of quality assurance field samples, precision and accuracy requirements, and laboratory data delivery requirements for all parameters monitored at the discharge to Outfall 001.

3.33. Respondent’s QAP does not comply with the requirements of Part II.A of the Permit and Respondent is therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.34. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated section 1311 . . . or has violated any permit condition or limitation” in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$16,000 per day, except that the maximum amount of penalty under this subparagraph may not exceed \$187,500.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$85,896.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered to the following address:



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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. *Interest.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

§ 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.



4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

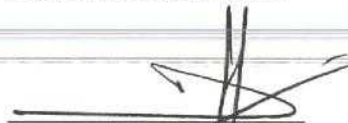
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8-01-2016

FOR RESPONDENT:

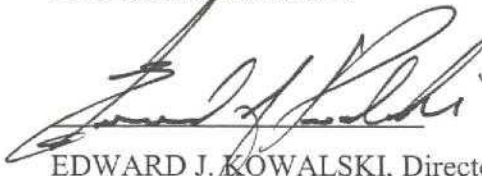


NICOLAS DEPUYDT, Site Director  
Sorrento Lactalis, Inc.

DATED:

8/25/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

#### V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply

with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 6<sup>th</sup> day of September 2016.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: SORRENTO LACTALIS, INC., DOCKET NO.: CWA-10-2016-0131** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Heather Mapes  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Nicolas Depuydt  
Sorrento Lactalis, Inc.  
4912 East Franklin Road  
Nampa, Idaho 83653

DATED this 8 day of September, 2016

  
\_\_\_\_\_  
Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10