



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

In the Matter of:)	
	)	EPA Docket Nos.: CERCLA-03-2011-0061
Galliker Dairy Company	)	EPCRA-03-2011-0061
143 Donald Lane)	
Johnstown, Pennsylvania	)	Proceedings Pursuant to Sections 103 and
15904,	)	109 of the Comprehensive Environmental
	)	Response, Compensation, and Liability Act,
Respondent.	)	42 U.S.C. §§ 9603, 9609, and Sections 304, 311
	)	and 312 of the Emergency Planning and
Galliker Dairy Company	)	Community Right-to-Know Act, 42 U.S.C.
143 Donald Lane	)	§§ 11004, 11021, 11022
Johnstown, Pennsylvania)	
15904,)	
)	
Facility.)	
)	

CONSENT AGREEMENT

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. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”). This CA is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this CA is proposed and entered into 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” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, (“Part 22”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

PRELIMINARY STATEMENT

1. The implementing regulations for the emergency notification requirements in Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355, and the implementing regulations for the hazardous chemical reporting requirements in Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, are codified at 40 C.F.R. Part 370. On November 3, 2008, EPA issued a final rule, 73 Fed. Reg. 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Parts 355 and 370, which became effective on December 3, 2008. This CA/FO references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of the violations alleged herein.

FINDINGS OF FACT

2. Respondent Galliker Dairy Company ("Galliker" or "Respondent") is a Pennsylvania corporation with its principal place of business located at 143 Donald Lane in Johnstown, Pennsylvania.

3. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3, 355.61 (355.20), and 370.66 (370.2).

4. Beginning in or about 1974, and at all times relevant to this CA/FO, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and has been the owner and operator of, within the meaning of Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022, the food and dairy manufacturing facility located at 143 Donald Lane in Johnstown, Pennsylvania (the "Facility").

5. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), Sections 304, 311 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022, and their respective regulations, 40 C.F.R. §§ 302.3, 355.61 (355.20), and 370.66 (370.2).

6. On or about July 15, 2009, EPA conducted an inspection of the Facility to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the

environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

8. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a)-(c) of EPCRA, 42 U.S.C. § 11004(a)-(c), ("Reportable Quantity" or "RQ"). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

9. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

10. Beginning on or about March 11, 2008, at or about 12:15 p.m., an estimated 170 pounds of ammonia, Chemical Abstracts Service ("CAS") No. 7664-41-7, were released from the Facility (the "Release").

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

11. The findings of fact contained in paragraphs 1 through 10 of this CA/FO are incorporated by reference herein as though fully set forth at length.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

13. Ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

14. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

16. Respondent knew or should have known of the Release of ammonia from the Facility, in a quantity equal to or exceeding its RQ, at or about 12:30 p.m. on March 11, 2008.

17. Respondent did not notify the NRC of the Release until approximately 3:06 p.m. on March 11, 2008.

18. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

19. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

20. The findings of fact and conclusions of law contained in paragraphs 1 through 19 of this CA/FO are incorporated by reference herein as though fully set forth at length.

21. Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

22. Ammonia is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61 (40 C.F.R. § 355.20), with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

23. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this CA/FO, the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania.

24. The Release of ammonia from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.

25. The Release required immediate notification of the SERC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

26. Respondent did not notify the SERC of the Release.

27. Respondent failed to immediately notify the SERC of the Release of ammonia as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

28. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

29. The findings of fact and conclusions of law contained in paragraphs 1 through 28 of this CA/FO are incorporated by reference herein as though fully set forth at length.

30. The LEPC for the Facility is, and has been at all times relevant to this CA/FO, the Cambria County Emergency Management Agency, located at 110 Franklin, Suite 200 in Johnstown, Pennsylvania.

31. The Release required immediate notification of the LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

32. Respondent did not notify the LEPC of the Release until approximately 2:30 p.m. on March 11, 2008.

33. Respondent failed to immediately notify the LEPC of the Release of ammonia as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

34. Respondent's failure to notify the LEPC immediately of the Release is a violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

35. The findings of fact and conclusions of law contained in paragraphs 1 through 34 of this CA/FO are incorporated by reference herein as though fully set forth at length.

36. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, that when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC and the LEPC, as soon as practicable.

37. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ, requiring immediate notification of the SERC and LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), and, consequently, requiring submission of written follow-up reports to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

38. Respondent never provided a written follow-up report to the SERC.

39. Respondent did not provide a written follow-up report regarding the Release to the SERC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

40. Respondent's failure to provide a written follow-up report regarding the Release to the SERC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – SERC**

41. The findings of fact and conclusions of law contained in paragraphs 1 through 40 of this CA/FO are incorporated by reference herein as though fully set forth at length.

42. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370 (40 C.F.R. § 370.21), requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS in a quantity equal to or greater than its applicable minimum threshold for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10 (40 C.F.R. § 370.20), to submit, either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate SERC, LEPC, and Local Fire Department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

43. Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

44. Respondent is an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).

45. Respondent is required to have MSDSs at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

46. Respondent is the owner or operator of a facility that is required to prepare or have available an MSDS for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

47. Sulfuric acid, CAS No. 7664-93-9, nitric acid, CAS No. 7697-37-2, and Jet Loob™, are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66 (40 C.F.R. § 370.2). Sulfuric acid and nitric acid are also EHSs as defined in Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.66 (40 C.F.R. § 370.2), and as listed in 40 C.F.R. Part 355, Appendices A and B.

48. Pursuant to 40 C.F.R. § 370.10, the MTLs for sulfuric acid, nitric acid, and Jet Loob™, are 500 pounds, 500 pounds, and 10,000 pounds, respectively.

49. During calendar year 2006, Respondent had present at its Facility 2,814 pounds of sulfuric acid, and 13,000 pounds of Jet Loob™.

50. During calendar year 2007, Respondent had present at its Facility 2,679 pounds of sulfuric acid, 1,077 pounds of nitric acid, and 13,000 pounds of Jet Loob™.

51. During calendar year 2008, Respondent had present at its Facility 2,774 pounds of sulfuric acid, 1,077 pounds of nitric acid, and 13,000 pounds of Jet Loob™.

52. At any one time during calendar years 2006, 2007, and 2008, Respondent had present at the Facility hazardous chemicals in quantities exceeding their respective MTLs.

53. For the purpose of submissions pursuant to Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, the SERC for the Facility is, and has been at all times relevant to this CA/FO, the Pennsylvania Department of Labor and Industry, Bureau of PENNSAFE, Room 155-E L&I Building, 7th and Forster Streets in Harrisburg, Pennsylvania.

54. Respondent was required to submit to the SERC either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as being present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTL.

55. Respondent failed to submit to the SERC, either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTLs.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – SERC**

56. Respondent's failure to submit to the SERC either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTL(s), constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – LEPC**

57. The findings of fact and conclusions of law contained in Paragraphs 1 through 56 of this CA/FO are incorporated by reference herein as though fully set forth at length.

58. The Local Fire Department for the Facility is, and has at all times relevant to this CA/FO, the Richland Township Fire Department, located at 1321 Scalp Avenue in Johnstown, Pennsylvania.

59. Respondent was required to submit to the LEPC either MSDSs for, or list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as being present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTLs.

60. Respondent failed to submit to the LEPC either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTLs.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – LEPC**

61. Respondent's failure to submit to the LEPC either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTLs, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – LOCAL FIRE DEPARTMENT**

62. The findings of fact and conclusions of law contained in Paragraphs 1 through 61 of this CA/FO are incorporated by reference herein as though fully set forth at length.

63. Respondent was required to submit to the Local Fire Department either MSDSs for, or list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as being present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTLs.

64. Respondent failed to submit to the Local Fire Department, either MSDSs for, or a list of hazardous chemicals, identifying sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTLs, no later than three (3) months after Respondent had sulfuric acid, nitric acid, and Jet Loob™ present at the Facility in quantities equal to or greater than their respective MTLs.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – LOCAL FIRE DEPARTMENT**

65. Respondent's failure to submit to the Local Fire Department either MSDSs for, or a list of hazardous chemicals identifying, sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities exceeding their respective MTLs, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 – SERC**

66. The findings of fact and conclusions of law contained in Paragraphs 1 through 65 of this CA/FO are incorporated by reference herein as though fully set forth at length.

67. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370 (40 C.F.R. § 370.25), requires the owner or operator of a facility required to prepare or have available a MSDS for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ, to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and Local Fire Department with jurisdiction over the facility.

68. By March 1, 2009, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility during calendar year 2008 in quantities equal to or greater than their respective MTLs, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the hazardous chemicals.

69. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2008 to the SERC, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, on an unknown date.

70. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the SERC for calendar year 2008 did not identify three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs, and failed to provide the required information concerning the hazardous chemicals.

71. Respondent failed to submit to the SERC, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning the hazardous chemicals.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 – SERC**

72. Respondent's failure to submit to the SERC, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning those chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 –
LEPC**

73. The findings of fact and conclusions of law contained in Paragraphs 1 through 72 of this CA/FO are incorporated by reference herein as though fully set forth at length.

74. In or about March 2009, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2008 to the LEPC, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

75. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the LEPC for calendar year 2008 did not identify three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs, and failed to provide the required information concerning the hazardous chemicals.

76. Respondent failed to submit to the LEPC, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning the hazardous chemicals.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 – LEPC**

77. Respondent's failure to submit to the LEPC, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning those chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 –
LOCAL FIRE DEPARTMENT**

78. The findings of fact and conclusions of law contained in Paragraphs 1 through 77 of this CA/FO are incorporated by reference herein as though fully set forth at length.

79. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2008 to the Local Fire Department, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, on an unknown date.

80. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the Local Fire Department for calendar year 2008 did not identify three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs, and failed to provide the required information concerning the hazardous chemicals.

81. Respondent failed to submit to the Local Fire Department, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning the hazardous chemicals.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008 –
LOCAL FIRE DEPARTMENT**

82. Respondent's failure to submit to the Local Fire Department, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying three (3) hazardous chemicals, namely sulfuric acid, nitric acid, and Jet Loob™, as present at the Facility in quantities equal to or greater than their respective MTLs at any one time during calendar year 2008, and providing the required information concerning those chemicals, constitutes a violation

of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF
EPCRA – CALENDAR YEAR 2007**

83. The findings of fact and conclusions of law contained in Paragraphs 1 through 82 of the CA/FO are incorporated by reference herein as though fully set forth at length.

84. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying sulfuric acid, nitric acid, and Jet Loob™ as present at the Facility during calendar year 2007 in quantities greater than their respective MTLs, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

85. On or about April 29, 2008, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the SERC and LEPC, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

86. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the Local Fire Department, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, on an unknown date.

87. Respondent's Emergency and Hazardous Chemical Inventory Forms for calendar year 2007 did not identify sulfuric acid, nitric acid, and Jet Loob™ as present at the Facility in quantities equal to or greater than their respective MTLs.

88. Respondent failed to submit to the SERC, LEPC, and Local Fire Department, by March 1, 2008, complete and accurate Emergency and Hazardous Chemical Inventory Forms identifying sulfuric acid, nitric acid, and Jet Loob™ as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2007, and providing the required information concerning the hazardous chemicals.

**CONCLUSIONS OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF
EPCRA – CALENDAR YEAR 2007**

89. Respondent's failure to submit to the SERC, LEPC, and Local Fire Department by March 1, 2008, complete and accurate Emergency and Hazardous Chemical Inventory Forms identifying sulfuric acid, nitric acid, and Jet Loob™ as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2007, and providing the required information concerning those chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF
EPCRA – CALENDAR YEAR 2006**

90. The findings of fact and conclusions of law contained in Paragraphs 1 through 89 of the CA/FO are incorporated by reference herein as though fully set forth at length.

91. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and Local Fire Department, Emergency and Hazardous Chemical Inventory Forms identifying sulfuric acid and Jet Loob™ as present at the Facility during calendar year 2006 in quantities greater than their respective MTLs, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

92. On or about March 22, 2007, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the LEPC, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

93. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the Local Fire Department as required by Section 312 of EPCRA, 42 U.S.C. § 11022, on an unknown date.

94. Respondent did not submit an Emergency and Hazardous Chemical Inventory Form for calendar year 2006 to the SERC as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

95. Respondent's Emergency and Hazardous Chemical Inventory Forms for calendar year 2006 did not identify sulfuric acid and Jet Loob™ as present at the Facility in quantities equal to or greater than their respective MTLs.

96. Respondent failed to submit to the SERC, LEPC, and Local Fire Department, by March 1, 2007, complete and accurate Emergency and Hazardous Chemical Inventory Forms identifying sulfuric acid and Jet Loob™ as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2006, and providing the required information concerning the hazardous chemicals.

**CONCLUSIONS OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF
EPCRA – CALENDAR YEAR 2006**

97. Respondent's failure to submit to the SERC, LEPC, and Local Fire Department by March 1, 2007, complete and accurate Emergency and Hazardous Chemical Inventory Forms identifying sulfuric acid and Jet Loob™ as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2006, and providing the required information concerning those chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

98. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$7,255.00**, (“CERCLA civil penalty”), and for the violations of Sections 304(a) and (b), 304(c), 311 and 312 of EPCRA, 42 U.S.C. §§ 11004(a)-(b), 11004(c), 11021, 11022, set forth above, in the amount of **\$31,240.00** (“EPCRA civil penalty”).

PAYMENT TERMS

99. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the CERCLA civil penalty of \$7,255.00 and EPCRA civil penalty of \$31,240.00, no later than thirty (30) days after the effective date of the Final Order (the “final due date”) by either cashier’s check, certified check, or electronic wire transfer. Payment of the CERCLA civil penalty and EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Numbers of this action;
- b. All checks for the CERCLA civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**; all checks for the EPCRA civil penalty shall be made payable to **United States Treasury**;
- c. All payments for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- d. All payments for the EPCRA civil penalty made by check and sent by regular mail shall be addressed to:

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

- e. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

- f. All payments for the EPCRA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- g. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- h. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 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

- i. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

j. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

k. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

100. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

101. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are 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)*.

102. 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 and 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 by the final due date 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.

103. 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 waive 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).

104. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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.

105. 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 in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

106. Failure by the Respondent to pay the \$7,255.00 CERCLA civil penalty and the \$31,240.00 EPCRA civil penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

107. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

108. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

109. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations or conclusions of law set forth in this CA except as set forth in paragraph 107 above, but expressly waives its rights to contest said allegations.

110. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045.

111. 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 the 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.

112. This CA/FO resolves only those civil claims which are alleged herein. 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

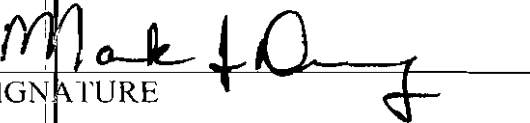
In re: Galliker Dairy Company

CERCLA-03-2011-0061
EPCRA-30-2011-0061

welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

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

FOR GALLIKER DAIRY COMPANY:


SIGNATURE

December 15, 2010
DATE

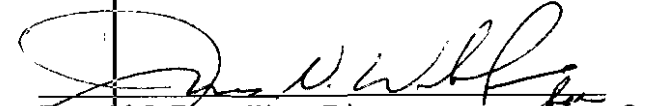
Name: Mark J. Duray

Title: Chief Operating Officer

In re: Galliker Dairy Company

CERCLA-03-2011-0061
EPCRA-30-2011-0061

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY


Ronald J. Borsellino, Director
Hazardous Site Cleanup Division
for
RJB

December 28, 2010
DATE



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

In the Matter of:)	
	)	EPA Docket Nos.: CERCLA-03-2011-0061
Galliker Dairy Company	)	EPCRA-03-2011-0061
143 Donald Lane)	
Johnstown, Pennsylvania	)	Proceedings Pursuant to Sections 103 and
15904,	)	109 of the Comprehensive Environmental
	)	Response, Compensation, and Liability Act,
Respondent.	)	42 U.S.C. §§ 9603, 9609, and Sections 304, 311
	)	and 312 of the Emergency Planning and
	)	Community Right-to-Know Act, 42 U.S.C.
Galliker Dairy Company	)	§§ 11004, 11021, 11022
143 Donald Lane)	
Johnstown, Pennsylvania)	
15904,)	
)	
Facility.)	
)	

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, 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, 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, and Section 325 of EPCRA, 42 U.S.C. § 11045, 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

Renée Sarajian
 Renée Sarajian
 Regional Judicial Officer
 EPA, Region III

12/29/10
 DATE