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

March 15, 2011

Richard T. Rossier
McLeod, Watkinson & Miller
One Massachusetts Ave., N.W. Suite 800
Washington, D.C. 20001

Re: **In the Matter of Maryland & Virginia Milk Producers Cooperative Association, Inc., U.S. EPA Docket Nos. CWA-03-2011-0075, EPCRA-03-2011-0075**

Dear Richard:

Enclosed please find a copy of Consent Agreement and Final Order, which has been filed with the Regional Hearing Clerk today.

Sincerely yours,

Cynthia T. Weiss
Senior Assistant Regional Counsel

Enclosure
cc: Robert Staves

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

In the Matter of:	)	
	)	**Docket Nos. CWA-03-2011-0075**
	)	**EPCRA-03-2011-0075**
Maryland & Virginia Milk Producers Cooperative Association, Inc.,	)	
	)	
Respondent.	)	
	)	
See Appendix A	)	
	)	
Facilities.	)	

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency - Region III ("Complainant") and Maryland & Virginia Milk Producers Cooperative Association, Inc. ("MVMP" or "Respondent") pursuant to Sections 301, 309, and 311 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311, 1319, 1321, and the regulations implementing CWA Section 311, as set forth in 40 C.F.R. Part 112, and Section 312 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11022 and 11045(c), the regulations implementing EPCRA Section 312, as set forth at 40 C.F.R. Part 370, and 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. Pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve the violations of the CWA Section 301 and 311, and EPCRA Section 312, as alleged herein, by Respondent at its Facilities identified in Appendix A.

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies

the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. Respondent shall bear its own costs and attorney's fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Maryland & Virginia Milk Producers Cooperative Association, Inc. is a dairy farmer cooperative association incorporated under the laws of the Commonwealth of Virginia with its principal place of business located at 1985 Isaac Newton Square West, Reston, Virginia 20190.

8. Respondent is the owner and operator of a fluid processing plant located in Newport News, Virginia, and, through its wholly-owned subsidiaries, Marva-Maid Landover Land, LLC, and Marva Maid Landover Operations, LLC, the owner and operator of a fluid processing plant located in Landover, Maryland, and, through its wholly-owned subsidiary, Maola Milk and Ice Cream Company, Inc, the owner and operator of a fluid processing plant in New Bern, North Carolina. Respondent also owns and operates a manufacturing plant located in Laurel, Maryland, and, through its wholly-owned subsidiary, Valley Milk Products, LLC, it owns and operates a manufacturing plant in Strasburg, Virginia; a farm supply warehouse located in Frederick, Maryland; and a distribution facility located in Colonial Heights, Virginia. The five facilities located at Newport News, Virginia, Landover, Maryland, Laurel, Maryland, Frederick, Maryland, and Colonial Heights, Virginia that are the subject of this Agreement are collectively referred to herein as the "Facilities."

FINDINGS OF FACT AND CONCLUSIONS OF LAW – CWA SECTION 301

9. The allegations contained in Paragraphs 1 through 8 of this CAFO are incorporated by reference herein as though fully set forth at length.

10. On April 26, 2004, the Maryland Department of the Environment issued

Respondent National Pollutant Discharge Elimination Permit ("NPDES") Number MD0000469 for its Laurel facility (hereinafter "NPDES Permit"), under the authority of Title 9 of the Environment Article, *Annotated Code of Maryland*, and regulations promulgated thereunder, and the provisions of the CWA, 33 U.S.C. § 1251 *et seq.* and implementing regulations at 40 CFR Parts 122, 123, 124 and 125.

11. Section I.Q.2. of the NPDES Permit required the preparation of a Storm Water Pollution Prevention Plan including, *inter alia*, site-specific descriptions of storm water management controls and an estimate of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity, consistent with 40 C.F.R. § 122.26(c).

12. Respondent's Storm Water Pollution Prevention Plan did not include site-specific descriptions of storm water management controls or an estimate of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity.

13. Respondent's Storm Water Pollution Prevention Plan violated the requirements of the NPDES Permit and of 40 C.F.R. § 122.26(c).

14. Respondent's failure to prepare a Storm Water Pollution Prevention Plan in accordance with the requirements of the NPDES Permit and 40 C.F.R. § 122.26(c) is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is, therefore, subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

FINDINGS OF FACT AND CONCLUSIONS OF LAW – CWA SECTION 311

15. The allegations contained in Paragraphs 1 through 14 of this CAFO are incorporated by reference herein as though fully set forth at length.

16. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil... from onshore facilities...and to contain such discharges . . . ."

17. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

18. EPA subsequently promulgated the Spill Prevention, Control and Countermeasure ("SPCC") regulations ("SPCC regulations") which are codified at 40 C.F.R. Part 112 Subparts A,

B, and C, pursuant to the delegated statutory authorities referred to above, and pursuant to its authorities under the CWA, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

19. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

20. Respondent is engaged in storing, transferring, or distributing oil or oil products located at the respective Facilities.

21. Each Facility has a total oil storage capacity in the following quantities: Colonial Heights, Virginia: between 1,320 and 10,000 gallons; Frederick, Maryland: between 1,320 and 10,000 gallons; Landover, Maryland: between 1,320 and 10,000 gallons; Laurel, Maryland: greater than 10,000 gallons; and Newport News, Virginia: greater than 10,000 gallons.

22. Respondent is the owner and operator of the Facilities within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2.

23. Each of the Facilities is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

24. Each of the Facilities is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility") within the meaning of 40 C.F.R. Part 112.

25. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C) and 40 C.F.R. § 112.1 Respondent, as the owner and operator of SPCC-regulated facilities, is subject to the SPCC regulations.

26. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), requires Respondent to prepare a site-specific SPCC Plan for each Facility with greater than 1,320 gallons of oil. Qualified Facilities must prepare SPCC Plans in accordance with 40 C.F.R. § 112.6. and all other facilities must prepare SPCC Plans in accordance with 40 C.F.R. § 112.7.

27. Respondent's Frederick, Maryland facility is a Tier II Qualified Facility, as defined at 40 C.F.R. § 112.3(g).

28. Respondent's Landover, Maryland facility is a Tier II Qualified Facility, as

defined at 40 C.F.R. § 112.3(g).

29. EPA determined, based on its review of documentation provided by Respondent, that Respondent had not prepared or implemented a site-specific SPCC Plan for its Frederick, Maryland facility in accordance with 40 C.F.R. § 112.6.

30. EPA determined, based on its review of documentation provided by Respondent, that Respondent had not implemented a site-specific SPCC Plan for its Landover, Maryland facility in accordance with 40 C.F.R. § 112.6, which incorporates certain sections of 40 C.F.R. § 112.7. Specifically, at its Landover, Maryland facility, Respondent failed to update its SPCC Plan, document training offered to oil handlers in 2006 or 2007 and conduct oil storage area inspections in 2006 and 2007, as required by 40 C.F.R. § 112.7.

31. EPA determined, based on its review of documentation provided by Respondent, that Respondent had not fully implemented an SPCC Plan at its Laurel facility. Specifically, Respondent failed to provide SPCC training to its personnel, and update and properly certify its SPCC Plan, including its site map and inventory and location for the oil storage containers, transformers, and areas of runoff on site, as required by 40 C.F.R. § 112.7.

32. EPA determined, based on its review of documentation provided by Respondent, that Respondent had not fully implemented an SPCC Plan at its Newport News facility. Specifically, Respondent failed to perform oil storage area inspections, as required by 40 C.F.R. § 112.7.

33. EPA determined, based on its review of documentation provided by Respondent, that Respondent had not fully prepared or implemented an SPCC Plan at its Colonial Heights facility, as required by 40 C.F.R. § 112.7.

34. By failing to prepare and implement the SPCC Plans and updates in accordance with 40 C.F.R. Section Part 112, Respondent is in violation of the requirements of 40 C.F.R. § 112.3, and is subject to penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

PRELIMINARY STATEMENT – EPCRA

35. The implementing regulations for the hazardous chemical reporting requirements in Section 312 of EPCRA, 42 U.S.C. § 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. Part 370, which became effective on December 3, 2008. This CAFO 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 AND CONCLUSIONS OF LAW – EPCRA

36. The allegations contained in Paragraphs 1 through 35 of this CAFO are incorporated by reference herein as though fully set forth at length.

37. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 370.66 (370.2).

38. The Frederick facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.66 (370.2).

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

40. Respondent is an "employer" as that term is defined at 29 U.S.C. § 1910.1200(c).

41. Respondent is required to have a Material Safety Data Sheet ("MSDS") at the Frederick facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

42. Motor oil is a "hazardous chemical" 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).

43. Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

44. Pursuant to 40 C.F.R. § 370.10, the maximum threshold level ("MTL") for motor oil is 10,000 pounds.

45. At any one time during calendar years 2005 and 2006, Respondent had present at its Frederick facility greater than 10,000 pounds of motor oil.

46. At any one time during calendar years 2005 and 2006, Respondent had present at the Frederick facility a hazardous chemical in a quantity exceeding its MTL.

47. 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 an MSDS for a hazardous chemical in accordance with OSHA's 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 extremely hazardous substance) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or threshold planning quantity to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC"), and local fire department with jurisdiction over the facility.

48. By March 1, 2006 and March 1, 2007, Respondent was required to submit to the SERC, LEPC, and the local fire department for the Frederick facility a Chemical Inventory Form identifying the motor oil as present at the Frederick facility during calendar years 2005 and 2006 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the motor oil.

49. Respondent failed to submit to the SERC, LEPC and the local fire department for the Frederick facility by March 1, 2006 and 2007, a complete and accurate Chemical Inventory Form for the Frederick facility for calendar years 2005 and 2006 identifying the motor oil.

50. Respondent's failure to submit a complete and accurate Chemical Inventory Form for the Frederick facility to the SERC, LEPC and local fire department by March 1, 2006 and 2007, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

51. The proposed penalty for the CWA violations was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. §1321(b)(8), including the seriousness of the violation; the nature, extent, and degree of success of the respondent's mitigation efforts; and other matters as justice may require, and the *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995.

52. The proposed penalty for the EPCRA violations was calculated based upon the consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 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 1999.

53. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and EPA's 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 violations of Sections 301 and 311 of the CWA, 33 U.S.C. § 1321, set forth above, in the amount of $27,546 for the CWA penalty, and violations of Section 312 of EPCRA, 42 U.S.C. § 11021, and, in the amount of $817 for the EPCRA penalty, for a total penalty of $28,363, and to the performance of the Supplemental Environmental Project.

PAYMENT TERMS

54. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, the Respondent must pay the civil penalty, totaling **$28,363**, no later than thirty (30) days after the effective date of the Final Order (the "final due date").

55. Payment of the **$27,546 CWA civil penalty** shall be made in the following manner:

a. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If paying by check, Respondent shall note on the penalty payment check the title and docket number (CWA-03-2011-0075) of this case.

b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

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

d. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

e. If paying by EFT, field tag 4200 of the Fedwire message shall read: "(D 68010727 Environmental Protection Agency)." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

f. If paying through the Department of Treasury's Online Payment system, please access "www.pay.gov," enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is "civil penalty," the docket number "CWA-03-2011-0075" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

g. Additional payment guidance is available at:

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

56. Payment of the **$817 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 Number of this action;

b. All checks shall be made payable to **United States Treasury**;

c. All payments 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
Contact: Eric Volck 513-487-2105

d. All payments 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
Contact: Eric Volck 513-487-2105

e. 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

f. 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

g. 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

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

57. The Respondent shall submit a copy of the check(s), or verification(s) of wire transfer or ACH to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

58. 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 CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

59. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

60. 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.

61. A penalty charge of six 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).

62. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

63. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, effective May 1, 1998.

64. Respondent agrees to install and operate an ammonia detection system at the Maola Milk and Ice Cream Company, located in New Bern, North Carolina, which is owned and operated by Respondent's wholly-owned subsidiary Maola Milk & Ice Cream Company, Inc. The ammonia detection system ("SEP") will consist of additional strategically located ammonia sensors, valves and fitting to enable automatic liquid refrigerant feed control, additional AV signaling devices, a central control panel and an automatic dialer. The SEP will include, *inter alia*, training by factory-authorized representatives. It is described further in Respondent's Supplemental Environmental Project Proposal ("SEP Proposal"), attached hereto as Appendix B and incorporated herein by reference. Respondent shall complete the installation of the ammonia detection system within ninety (90) days of the effective date of this CAFO.

65. Respondent's total expenditure for the SEP shall not be less than $60,000, in accordance with the specifications set forth in the SEP Proposal. The SEP has a mitigation value of $36,000. The SEP has been accepted by EPA as part of this settlement. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 69 below.

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

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

68. Respondent shall notify EPA, c/o Cynthia T. Weiss at the address noted in Paragraph 69, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations to install if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete

the SEP within the time frame required by Paragraph 64. Requests for any extension must be made in writing within 48 hours of any event, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame ("force majeure event"), and prior to the expiration of the allowed SEP completion deadline. Any requests should be directed to Cynthia T. Weiss at the address noted in Paragraph 69, below.

69. SEP Completion Report

a. Respondent shall submit a SEP Completion Report to EPA, c/o Cynthia T. Weiss, U.S. EPA Region III, 1650 Arch Street (Mailcode 3RC42), Philadelphia, PA 19103, within fourteen (14) days of completing the implementation of the SEP, as set forth in Paragraph 64. The SEP Completion Report shall contain the following information: detailed description of SEP as implemented; a description of any operating problems encountered and the solution thereto; a certified engineer's certification that the SEP is installed correctly and running properly; and itemized costs.

b. Respondent shall, by its officers, sign the reports required by this Paragraph 69 and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement: I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

c. Respondent agrees that failure to submit reports required by this Paragraph 69 shall be deemed a violation of this CAFO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 72 below.

d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where either report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts

specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

70. Respondent agrees that EPA may inspect the Facility at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

71. EPA Acceptance of the SEP Completion Report

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

(i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
(ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
(iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 72 herein.

b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 72 herein.

72. Stipulated Penalties

a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 64 above, and/or to the extent that the actual

expenditures for the SEP do not equal or exceed the costs of the SEP described in Paragraph 65 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in Subparagraph (iii) below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of $36,000.

(ii) If the SEP is not completed in accordance with Paragraph 64, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with Paragraph 64, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of $3,600.

(iv) If the SEP is completed in accordance with Paragraph 64, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 69 above, Respondent shall pay a stipulated penalty in the amount of $500.00 for each day after the report was originally due until the report is submitted.

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

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraphs 54-57. Interest and late charges shall be paid as set forth in Paragraphs 58-61.

CERTIFICATIONS

73. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facilities referred to in this Consent Agreement are currently in compliance with all applicable requirements of Section 312 of EPCRA, and Section 311 of the CWA.

OTHER APPLICABLE LAWS

74. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

RESERVATION OF RIGHTS

75. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CWA and EPCRA and the regulations promulgated thereunder, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

FULL AND FINAL SATISFACTION

76. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CAFO for alleged violations of Sections 301 and 311 of the CWA, 33 U.S.C. §§ 1301 and 1321, and Section 312 of EPCRA, 42 U.S.C. § 11022. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanction available by virtue of Respondent's violation of this agreement, other statutes and regulations, or any other applicable provision of law.

PARTIES BOUND

77. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon EPA, the Respondent and the officers, directors, employees, contractors,

successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

EFFECTIVE DATE

78. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk.

ENTIRE AGREEMENT

79. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Maryland and Virginia Milk Producers Cooperative Association, Inc.

Jay S. Bryant 1/21/11

SIGNATURE DATE

Name: JAY S. BRYANT

Title: CEO

Under the Authority of the
U.S. Environmental Protection Agency, Region III

Date: 2/6/11 **By:**

Samantha Beers, Director
Office of Enforcement, Compliance and
Environmental Justice

Appendix A

1. 5500 Chestnut Avenue, Newport News, Virginia 23605
2. 1850 Touchstone Road, Colonial Heights, Virginia 23834
3. 8321 Leishear Road, Laurel, Maryland 20725
4. 8001 Sheriff Road, Landover, Maryland 20785
5. 7432 Grove Road, Frederick, Maryland 21704

Appendix B