



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 6**

**1445 Ross Avenue, Suite 1200**

**Dallas, Texas 75202 - 2733**

19 MAR 2018

**Via Certified Mail (Return Receipt # 7015 3430 0000 5839 9551) and Email**

Elizabeth Gough  
PSM/Safety Director  
Hiland Dairy Foods Co.  
P.O. Box 219  
Chandler, OK 74834  
egough@hilanddairy.com

Re: EPCRA § 313 Consent Agreement & Final Order  
Hiland Dairy Foods Co., Docket No. EPCRA-06-2018-0505

Dear Ms. Gough:

Enclosed is the fully executed Consent Agreement & Final Order (CAFO) which has been filed with the Regional Hearing Clerk. Hiland has 30 days from the date of filing to submit the civil penalty of \$8,150.00 in the manner described in Section IV of the CAFO, beginning on page 5. The date of filing is stamped in the top right corner of the CAFO.

Should you have any questions, please contact David Riley at (214) 665-7298 or riley.david@epa.gov. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl T. Seager", with a long horizontal line extending to the right.

Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2018 MAR 29 11:04 AM  
REGIONAL HEARING ROOM  
EPA REGION VI

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IN THE MATTER OF:

HILAND DAIRY FOODS CO.  
CHANDLER, OKLAHOMA

RESPONDENT

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DOCKET NO. EPCRA-06-2018-0505

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**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Hiland Dairy Foods Co. (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. The EPA and Respondent agree that the settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO shall resolve only the violation that is set forth herein.

5. Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Hiland Dairy Foods Co. has corrected the violation alleged in this CAFO, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

**B. VIOLATION**

**Count One – Failure to Timely Report Nitric Acid for 2015**

19. During the 2015 calendar year, Respondent otherwise used nitric acid at the Facility in excess of the 10,000-pound threshold amount.

20. Respondent did not submit a Form R for nitric acid by July 1, 2016.

21. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a Form R for nitric acid for the 2015 calendar year to the EPA and to the State of Oklahoma by the applicable due date.

**IV. TERMS OF SETTLEMENT**

**A. CIVIL PENALTY**

22. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes the EPA to assess a civil penalty of up to \$55,907 per day for each violation of EPCRA.<sup>[1]</sup> Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violation, and with respect to Respondent, ability to pay, lack of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, cooperation, institution of corrective actions, and other factors as justice may require, it is **ORDERED** that

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<sup>[1]</sup> The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 codified at 40 C.F.R. Part 19.

Respondent be assessed a civil penalty of **Eight Thousand One Hundred and Fifty Dollars (\$8,150.00)**, which will settle the violation as alleged herein.

23. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the fully-assessed civil penalty of \$8,150.00 by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

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For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

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In the Matter of Hiland Dairy Foods Co.; Docket No. EPCRA-06-2018-0505

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

**PLEASE NOTE: Docket number EPCRA-06-2018-0505 shall be clearly typed on the check, or other method of payment, to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer, to the following:

David Riley  
EPCRA 313 Enforcement (6EN-H3)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received by the EPA and acknowledged in the Region.

24. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

25. If the Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, the EPA will 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.

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Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by the EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

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27. The EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollar (\$15.00) charge for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year

will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

28. This document is a “Final Order” as that term is defined in the “Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990),” dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of “prior such violations.”

**B. RETENTION OF ENFORCEMENT RIGHTS**

29. The EPA does not waive any rights or remedies available to the EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

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30. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

31. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of the EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants on, at or from Respondent’s facility.

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Furthermore, nothing in this CAFO shall be construed to prevent or limit the EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments, to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.



**C. COSTS**

32. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

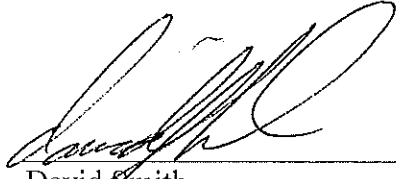
**D. EFFECTIVE DATE**

33. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**

Date: 3/12/18



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David Smith  
Operations Manager  
Hiland Dairy Foods Co.

**FOR THE COMPLAINANT:**

Date: 3/19/18



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Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division

**V. FINAL ORDER**

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

3/28/18



Thomas Rucki  
Regional Judicial Officer  
U.S. EPA Region 6

**CERTIFICATE OF SERVICE**

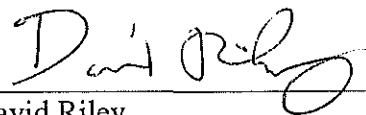
I hereby certify that on the 29<sup>th</sup> day of March, 2018, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT # 7015 3430 0000 5839 9551**

**Elizabeth Gough  
PSM/Safety Director  
Hiland Dairy Foods Co.  
P.O. Box 219  
Chandler, OK 74834**

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**Via Email (PDF): [egough@hilanddairy.com](mailto:egough@hilanddairy.com)**



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David Riley  
EPCRA 313 Enforcement Officer  
U.S. EPA Region 6