

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2012 MAY 14 PM 3: 29

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Swiss Valley Farms Cooperative)
11744 Edgewood Ave.)
Luana, Iowa 52156)

Docket No. EPCRA-07-2012-0003

Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Swiss Valley Farms Cooperative, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045(c).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air & Waste Management Division, EPA, Region 7.

4. The Respondent is Swiss Valley Farms Cooperative, located at 11744 Edgewood Avenue, Luana, Iowa 52156. The primary activity at Respondent's facility is cheese manufacturing.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. Part 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. Part 372.23(b) or (c); and (c) "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. Part 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. Part 11023(f), and 40 C.F.R. Part 372.25, 372.27 or 372.78 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for each toxic chemical known by the owner or operator to

be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity that preceding calendar year and shall contain data reflecting releases during the preceding calendar year. 40 C.F.R. Part 372.10 requires that complete records be maintained at the subject facility.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. Part 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day of for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

8. The regulations at 40 C.F.R. § 372.3 define “facility” as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any

person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”

9. The regulations at 40 C.F.R. § 372.3 define “full time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”

10. The regulations at 40 C.F.R. Part 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. Part 372.65.”

11. The regulations at 40 C.F.R. Part 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufactures also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixtures of chemicals as an impurity.”

12. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. Part 372.3.

13. “Otherwise use” means any use of toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or re-distributing of the toxic chemical with no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. Part 372.3.

Alleged Violations

14. EPA alleges that Respondent has violated EPCRA and federal regulations, promulgated pursuant to EPCRA, as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent’s facility located at located at 11744 Edgewood Ave., Luana, Iowa 52156, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

17. The Respondent’s facility has ten (10) or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA and as defined by 40 C.F.R. Part 372.3.

18. The Respondent’s facility is in NAICS Code 311513, cheese manufacturing.

19. The following are a “toxic chemicals” within the meaning of 40 C.F.R. Part 372.3 and 372.65: nitric acid and nitrate compounds.

20. During calendar year 2009, nitric acid and nitrate compounds were “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent’s facility.

21. On May 24, 2011, EPA Region 7's Chemical Risk Information Branch requested information from Respondent on Respondent's failure to file Form Rs for nitric acid and nitrate compounds for calendar year 2009.

Count 1

Failure to File Form R for Nitric Acid to EPA or the State of Iowa for Calendar Year 2009

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. Nitric Acid was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 10,000 pound threshold quantity during calendar year 2009.

24. The Respondent failed to file a Form R with EPA or the State of Iowa for the toxic chemical nitric acid by the July 1, 2010 deadline.

25. Respondent's failure to submit Form Rs for nitric acid is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 2

Failure to File Form R for Nitrate Compounds to EPA or the State of Iowa
for Calendar Year 2009

26. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

27. Nitrate Compounds were "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 25,000 pound threshold quantity during calendar year 2009.

28. The Respondent failed to file Form Rs with EPA or the State of Iowa for the toxic chemical nitrate compounds by the July 1, 2010 deadline.

29. Respondent's failure to submit Form Rs for nitrate compounds is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

CONSENT AGREEMENT

30. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

31. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

32. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

33. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

34. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

35. This CAFO addresses all civil claims for the alleged EPCRA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA or other applicable law.

36. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

37. The effect of settlement described in paragraph 35 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 36, above, of this CAFO.

38. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall purchase equipment for the Luana, Iowa Fire Department, at a cost of no less than Ten Thousand Seven Hundred and Eighty-Six Dollars (\$10,786), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

39. The total expenditure for the SEP shall be no less than \$10,786 and the SEP shall be completed no later than 180 days from effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

40. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented; and
- (ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.
- (iii) All reports shall be directed to the following:

Fatima Ndiaye
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

41. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the 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.

42. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraphs 38 and 39 of this CAFO and/or to the extent that the actual expenditures of the SEP does not equal or exceed the cost of the SEP described in paragraphs 38 and 39 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (ii) and (iii) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraph 39 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Twelve Thousand Nine Hundred and Forty-Three Dollars (\$12,943), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP.

- b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 40, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
- c. If the SEP is not completed in accordance with paragraphs 38 and 39 of this CAFO, but EPA 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.

43. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

44. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

45. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

46. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity

as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

47. 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.

48. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

49. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 36 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

50. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

51. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty-Three Thousand Eight Hundred and Eighty Dollars (\$33,880) within thirty days of entry of this Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The payments shall reference docket number EPCRA-07-2012-0003.

2. Copies of the checks should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

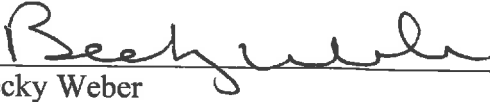
and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

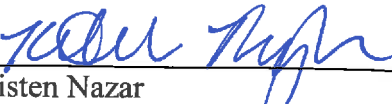
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date 5/11

By 
Becky Weber
Director
Air and Waste Management Division

Date 5/10/12

By 
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
SWISS VALLEY FARMS COOPERATIVE

By 
Title CEO
Date 5-9-2012

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date May 14, 2012 By 
ROBERT L. PATRICK
Regional Judicial Officer

JOAN U. AXEL
CHARLES R. COULTER
PATRICK W. DRISCOLL
TRISTA L. FOSTER¹
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April 13, 2012

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Ms. Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, KS 66101-2907

Dear Ms. Nazar:

**RE: SWISS VALLEY FARMS COOPERATIVE
SETTLEMENT NEGOTIATIONS**

We discussed the applicable guidelines of a voluntary settlement of the proposed civil penalties referenced in your letter of January 5, 2012, regarding the Swiss Valley Farms Cooperative facility in Luana, Iowa. We have revised this proposal from our February 21, 2012, draft to provide for direct purchase of the donated items by Swiss Valley, and from our April 12, 2012, letter to correct the reduced penalty amount payable to the EPA noted below.

This letter outlines Swiss Valley's proposed settlement of the alleged violations of EPCRA, of which Swiss Valley was notified by your letter of January 5, 2012.

Swiss Valley provides the following settlement proposal:

- | | | |
|----|---|----------------|
| 1. | Proposed penalty per EPA letter of January 5, 2012: | \$60,727.00 |
| 2. | Thirty percent (30%) good faith reduction of penalty: | (\$18,218.00) |
| 3. | Eighty percent (80%) credit for SEP Project consisting of Swiss Valley donation of Hazmat and fire protection equipment to the Luana Fire Department as itemized on Sandry Fire Supply, L.L.C. Quotation dated April 5, 2012, attached to this letter upon consultation with the Luana Fire Department. | (\$ 8,629.00) |
| 4. | Reduced penalty amount payable to EPA: | \$33,880.00 |

April 13, 2012

Please advise of the EPA requirements to qualify the proposed SEP Project for credit in reduction of the penalty. Swiss Valley will provide the documentation from the local fire department as may be required by the EPA to complete the settlement agreement.

Please advise if this settlement proposal is acceptable to the EPA for resolution of this matter, subject to compliance with EPA settlement procedures and documentation.

We appreciate your assistance in the resolution of this matter.

Very truly yours,

STANLEY, LANDE & HUNTER

By Steven T. Hunter
Steven T. Hunter

STH/alp
D3718

cc: Fatima Ndiaye, AWMD/CRIB
Donald Boelens
Rob Hlawek
Ed Seutter

Sandry Fire Supply, L.L.C.618 6th Street
DeWitt, IA 52742**QUOTATION**

Quote Number: m1734

Quote Date: Apr 5, 2012

Page: 1

Voice: 563-586-2938

Fax: 563-659-8147

Quoted To:Swiss Valley Farms
PO Box 4493
Davenport, IA 52808

Customer ID	Good Thru	Payment Terms	Sales Rep
Swiss Valley, IA	5/5/12	Net 30 Days	ron

Quantity	Item	Description	Unit Price	Amount
6.00	cgC363P	3%-6% AR-AFFF Chemguard Foam 5 gal	93.00	558.00
- 9.00	sfslabor	MSA Regulator Conversion 1/4 Turn to FireHawk used regulator	548.00	4,914.00
2.00	morBPR-3400	Morning Pride Coat, Kevlar/Nomex	901.00	1,802.00
2.00	morBPR-3400P	Morning Pride Pant, Kevlar/Nomex	541.00	1,082.00
✓ 13.00	daBG531	ONEglove Hazmat Gloves	125.00	1,625.00
1.00		estimate shipping est for all	100.00	100.00

Subtotal	10,081.00
Sales Tax	705.67
Freight	
TOTAL	10,786.67

IN THE MATTER OF Swiss Valley Farms Cooperative, Respondent
Docket No. EPCRA-07-2012-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Steven Hunter
Stanley, Lande & Hunter
900 U.S. Bank Center
201 West 2nd Street
Davenport, Iowa 52801

Dated: 5/15/12



Kathy Robinson
Hearing Clerk, Region 7