

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 AGENCY
MAY 26 PM 1:02
REGIONAL HEARING
CLERK

In the Matter of:	Docket No. CERCLA-02-2007-2019
Suiza Dairy Corporation San Patricio Avenue Río Piedras, San Juan, Puerto Rico	Administrative Complaint under Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045.
Respondent.	

ANSWER TO ADMINISTRATIVE COMPLAINT

Suiza Dairy Corporation (“Suiza” or “Respondent”) through the undersigned attorneys, presents its Answer to Administrative Complaint (“Complaint”), issued by the Environmental Protection Agency (“EPA”) on September 19th, 2007, and respectfully states, alleges and prays as follows:

I. STATUTORY AUTHORITY

1. The first sentence of Paragraph 1 of the Complaint, is a statement of law that requires no admission, denial or explanation and, in the alternative, is denied. “Respondent” is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 1 of the Complaint.

2. Respondent concurs that Paragraph 2 of the Complaint partially describes the content of Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, concerning the assessment of penalties for

violations of Section 103 of CERCLA, as well as of Section 325 of the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11045, concerning the assessment of penalties for violations of Section 304 of EPCRA, but denies in both instances their applicability to this case.

3. Respondent concurs that Paragraph 3 of the Complaint describes the content of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9603(a), concerning notification of certain releases to the National Response Center (“NRC”), but denies its applicability to this case.

4. Respondent concurs that Paragraph 4 of the Complaint describes the content of Section 304(a) of EPCRA, 42 U.S.C. § 11004, concerning notification of certain releases to local emergency planning committees (“LEPCs”) and state emergency planning committees (“SEPCs”) but denies its applicability to this case.

II. FINDINGS OF VIOLATIONS

5. Paragraph 5 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

6. Concerning Paragraph 6 of the Complaint, Respondent admits being the operator of the facility therein described; the remaining allegations state a conclusion of law that requires no admission, denial or explanation and, in the alternative, are denied.

7. Respondent admits the allegations of Paragraph 7 of the Complaint.

8. Respondent admits the allegations of the first sentence of Paragraph 8 of the Complaint. Concerning the second sentence, Respondent admits that the facility is located adjacent to populated residential and commercial areas but lacks knowledge or information sufficient to form a belief as to whether these areas can be classified as “densely populated” and,

therefore, denies the same. Concerning the third sentence, Respondent admits that the facility is, approximately, a mile, downwind, from the Puerto Rico Medical Center but lacks knowledge or information sufficient upon which to form a belief as to the remaining allegations of the sentence which, Respondent, furthermore, states are irrelevant to the Claims of the Complaint, inflammatory and should be stricken.

9. Respondent admits the allegations of Paragraph 9 of the Complaint

10. Concerning Paragraph 10 of the Complaint, Respondent admits that a release of ammonia (anhydrous) occurred at Respondent's Facility on or about the time and day alleged and continued for, approximately, 45 minutes; the remaining allegations of the Complaint state conclusions of law, or of the application of law to facts that require no admission, denial or explanation and, in the alternative, are denied.

11. Paragraph 11 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

12. Respondent concurs that Paragraph 12 of the Complaint describes reportable quantity amounts for ammonia as described in Sections 302.4 and 355 of Code of Federal Regulations Title 40, but denies its applicability to this case.

13. Respondent, upon information and belief, admits the allegations of Paragraph 13 of the Complaint with the exception of the last sentence which is a conclusory, argumentative allegation that requires no admission of denial and, in the alternative, is denied.

14. Respondent lacks knowledge or information sufficient to form a belief concerning the information obtained by EPA as alleged in Paragraph 14, but admits that as part of the emergency measures taken in response to the release, people from nearby communities and employees were evacuated and people required medical attention.

15. Respondent admits, as alleged in Paragraph 15, that EPA personnel conducted an inspection at the Facility on May 4, 2007, but lacks knowledge or information sufficient to form a belief as to the nature or type of inspection performed as therein alleged.

COUNT I

16. Respondent incorporates herein by reference, as though fully set forth, its response to the allegations contained in Paragraphs 1-15 of the Complaint, set forth in Paragraphs 1-15 of this Answer to the Complaint.

17. Respondent admits the allegations of the first sentence of Paragraph 17 and denies the allegations of the second sentence.

18. Paragraph 18 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

19. Paragraph 19 of the Complaint states a conclusion of law that require no admission, denial or explanation and, in the alternative, are denied.

20. Paragraph 20 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

COUNT II

21. Respondent incorporates herein by reference, as though fully set forth, its response to the allegations contained in Paragraphs 1-20 of the Complaint, set forth in Paragraphs 1-20 of this Answer to the Complaint.

22. Respondent admits the allegations of Paragraph 22 of the Complaint.

23. Respondent denies the allegations of Paragraph 23 of the Complaint.

24. Respondent denies the allegation of Paragraph 24 of the Complaint.

25. Concerning Paragraph 25 of the Complaint, Respondent admits that the LEPC for the area where the Facility is located is the San Juan LEPC and denies the remaining allegations.

26. Respondent denies the allegations of Paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, are denied.

28. Paragraph 28 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, are denied.

29. Except as specifically admitted, all factual allegations contained in Part II (Findings of Violations) of the Complaint are denied.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

In response to this section, Respondent alleges that the proposed final order assessing administrative penalties in the amounts of \$32,500, for the alleged failure to immediately notify the NRC, and \$32,500 for the alleged failures to immediately notify the SERC and LEPC, have no basis in law or in fact. Moreover, the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account identical factors identified in EPCRA Section 325(b)(1)(C), 42 U.S.C. §11045(b)(1)(C), and CERCLA Section 109 (a)(3), 42 U.S.C. §9609 (a)(3), concerning, for present purposes pertinent, the “nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator ... any prior history of such violations, the degree of culpability, economic benefit or savings (if any), resulting from the violation, and such other matters as justice may require.”

IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

No response to the allegations of Part IV is requested and, thus, none is proffered.

V. INFORMAL SETTLEMENT CONFERENCE

No response to the allegations of Part VI is requested and, thus, none is proffered. Respondent requests celebration of a hearing upon the issues raised by the Complaint and Answer.

VI. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

No response to the allegations of Part VI is requested and, thus, none is proffered.

VII. RESERVATION OF RIGHTS

No response to the allegations of Part VI is requested and, thus, none is proffered.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted against Respondent.
2. Complainant recognizes Commonwealth of Puerto Rico Environmental Quality Board ("EQB") Chairman, Mr. Carlos W. López Freytes, as the State Emergency Response Commission Contact ("SERC") for emergency release notification purposes within the Commonwealth of Puerto Rico. Likewise, SERC has designated the EQB Environmental Emergencies Program as the lead or principal contact for the San Juan LEPC identified in Paragraph 25 of the Complaint.
3. Respondent, through Environmental Health and Safety Manager, Mr. Pedro E. Nieves Pedraza ("Mr. Nieves"), is a member and Director of the San Juan LEPC.
4. On or about 9:56 p.m., Mr. Luis A. Lozano ("Security Guard Lozano"), the on-duty security guard at Suiza, telephoned Mr. Nieves to inform of the ammonia release described in the Complaint, which is understood to have commenced on May 3rd, on or about 9:50 p.m.

5. Mr. Nieves Pedraza instructed Security Guard Lozano, although the amount of ammonia released was yet unknown, that he call 911 to report the release. The call was made and, as a result, both the LEPC and SERC, the later because of EQB's joint membership and leadership over both the LEPC and SERC, were immediately notified of the release.

6. Mr. Nieves Pedraza was at Respondent's Facility on or about 10:10 - 10:15 p.m.; other members of the LEPC, namely, the Fire Department, Municipality of San Juan, State [Commonwealth] Emergency Management Office (Zone 1) representatives, Commonwealth Police Officers, Commonwealth Department of Health paramedics, and Mr. Genaro Torres of EQB's Environmental Emergencies Office ("Emergencias Ambientales"), arrived at and around the Facility on or about 10:10 to 10:20 p.m. until, approximately, 12.45 a.m. May, 4th, when the emergency was over.

7. Neither the Commonwealth of Puerto Rico SERC, nor the LEPD, have issued or established procedures dictating means of communicating and notifying emergencies covered by EPCRA in any form or manner different from those procedures followed by Respondent on May 3, 2007.

8. A call made from the Commonwealth of Puerto Rico¹ to the National Response Center ("NRC") phone number (1-800-424-8802) results in the following recorded message: "Thank you for calling the National Response Center. If this is an emergency hang-up and dial 911, otherwise stay on the line and you will be connected to the next available [...unintelligible...] center."

9. As an LEPD member, Respondent, through Mr. Nieves, was aware that NRC proceedings instruct callers to contact 911 in case of emergencies.

¹ Respondent is unaware if calls from the Continental United States result in the same initial message.

10. By calling 911, Respondent effectively complied with NRC emergency notification requirements, for purposes of Puerto Rico, pursuant to CERCLA.

11. To the extent that Respondents acts or omissions may, without either so admitting or denying, be in non compliance with Sections 103 (a) of CERCLA, 42 U.S.C. §9603 (a), and EPCRA Section 304 (b)(1), 42 U.S.C. §11004(b)(1), those failures are de minimis in nature, did not result in the creation of further danger, as a result of the release, to health and public safety or human welfare, or a danger to the environment, nor in any form or manner result in delays, omissions or restriction in the performance of tasks and execution of plans by local emergency response personnel.

12. Any and all actions or omissions concerning compliance with Sections 103 (a) of CERCLA, 42 U.S.C. §9603 (a), and EPCRA Section 304 (b)(1), 42 U.S.C. §11004(b)(1), those have not resulted in any economic benefit to “Respondent”.

13. Respondent, at all times, acted diligently and expeditiously in executing its own emergency response plans, notifying local emergency response personnel and assisting local emergency response personnel in the execution of their tasks and obligations.

14. Respondent reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case should disclose.

WHEREFORE, it is respectfully requested that the “Complaint” in the instant case be dismissed.

CERTIFICATE OF SERVICE: This Answer to Administrative Complaint has been notified, in original and one copy, by certified mail, return receipt requested, to: Regional Hearing Clerk, U.S. EPA, Region II, 290 Broadway - 16th Floor, New York, New York 10007-1866; and copy was notified to Mr. Andrew L. Prashak, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007.

In San Juan, Puerto Rico this 17th day of November, 2007.

Respectfully submitted.

MARTINEZ-LORENZO LAW OFFICES

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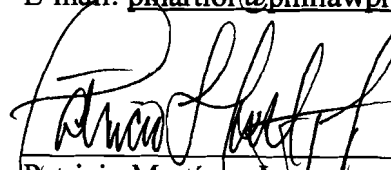
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