

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

FILED

2010 SEP 29 AM 8:23

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

IN THE MATTER OF

Rockview Dairies, Inc.

Respondent

Docket No. EPCRA-09-2010- 0029

**CIVIL COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING UNDER  
SECTION 325(c) OF THE EMERGENCY  
PLANNING AND COMMUNITY RIGHT-  
TO-KNOW ACT**

**PRELIMINARY STATEMENT**

**APPLICABLE STATUTORY AND REGULATORY SECTIONS**

This is a civil administrative action (“Complaint”) instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to implement Section 313 at 40 C.F.R. Part 372. The Administrator of the United States Environmental Protection Agency (“EPA”) has delegated the authority to file this action under EPCRA to the Regional Administrator, Region IX, by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX, has further delegated the authority to file this action under EPCRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX, who has been duly delegated the authority to bring this action. Respondent is Rockview Dairies, Inc. (“Rockview”). This administrative action alleges that Respondent has

1 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to  
2 implement Section 313 at 40 C.F.R. Part 372.  
3

4 A. GENERAL ALLEGATIONS

- 5 1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA  
6 promulgated the Toxic Chemical Release Reporting: Community Right-To-Know Rule at  
7 40 C.F.R. Part 372.  
8
- 9 2. Sections 313(a) and (b) of EPCRA, as implemented by 40 C.F.R. §§ 372.22 and 372.30,  
10 provide that an owner or operator of a facility that meets the criteria set forth in EPCRA  
11 Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator  
12 of EPA and to the State in which the facility is located, no later than July 1<sup>st</sup> of each year, a  
13 toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic  
14 chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise  
15 used at the facility during the preceding calendar year in quantities exceeding the thresholds  
16 established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.  
17
- 18 3. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section  
19 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or  
20 more full-time employees; that is in a Standard Industrial Classification major group codes  
21 10 (except 1011, 1081, 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931,  
22 or 4939 (limited to facilities regulated under the Resource Conservation and Recovery Act,  
23 subtitle C, 42 U.S.C. § 6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities primarily  
24 engaged in solvent recovery services on a contract or fee basis); and that manufactures,  
25 processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of  
26  
27  
28  
29  
30  
31  
32

1 EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds  
2 established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.  
3

- 4 4. The applicable threshold for reporting established under EPCRA Section 313(f) and 40  
5 C.F.R. § 372.25 is 25,000 pounds of a regulated toxic chemical manufactured for the year,  
6 and 10,000 pounds of a regulated toxic chemical otherwise used for the year.  
7
- 8 5. Under 40 C.F.R. § 372.3, the term “manufacture” means “produce, prepare, import, or  
9 compound a toxic chemical. . . [and] also applies to a toxic chemical that is produced  
10 coincidentally during the manufacture, processing, use, or disposal of another chemical or  
11 mixture of chemicals, including a toxic chemical that is separated from that other chemical  
12 or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other  
13 chemical or mixture of chemicals as an impurity.”  
14
- 15 6. Under 40 C.F.R. § 372.3, the term “otherwise used” means “any use of a toxic chemical,  
16 including a toxic chemical contained in a mixture or other trade name product or waste, that  
17 is not covered by the terms ‘manufacture’ or ‘process.’”  
18  
19  
20

21 **B. SPECIFIC ALLEGATIONS**

- 22 7. Respondent is a California registered corporation.  
23
- 24 8. Respondent owns, operates and is wholly responsible for a place of business with addresses  
25 at 7011 Stewart and Gray Road, Downey, CA 90241 (the “Facility”).  
26
- 27 9. Respondent is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. §  
28 11049(7) since it is a corporation.  
29
- 30 10. At all times relevant to this Complaint, Respondent was an owner and operator of a  
31 “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and  
32 40 C.F.R. § 372.3.

- 1 11. At all times relevant to this Complaint, the Facility had 10 or more “full-time employees,”  
2 as that term is defined at 40 C.F.R. § 372.3.  
3
- 4 12. The Facility processes raw milk into other milk products, such as pasteurized milk, butter,  
5 and sour cream, packages these products, and then stores and/or distributes them elsewhere.  
6
- 7 13. The Facility uses a nitric acid product, Dazzle, to clean its equipment.
- 8 14. Nitrate Compounds are produced in the wastewater process at the Facility.
- 9 15. The Facility is classified under the North American Industry Classification System (NAICS)  
10 Code as 311511, which falls within Industry Code 311, Food Manufacturing.  
11
- 12 16. At all times relevant to this Complaint, the Facility fell within one of the listed NAICS  
13 codes set forth at 40 C.F.R. § 372.23 subjecting it to the TRI reporting requirements.  
14

15 Counts 1-4

- 16 17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.
- 17 18. Nitric acid is a chemical listed under 40 C.F.R. § 372.65, Chemical Abstracts Service  
18 (“CAS”) registry no. 7697-37-2.  
19
- 20 19. During calendar year 2005, the Facility otherwise used approximately 23,450 pounds of  
21 nitric acid.  
22
- 23 20. During calendar year 2006, the Facility otherwise used approximately 19,344 pounds of  
24 nitric acid.  
25
- 26 21. During calendar year 2007, the Facility otherwise used approximately 23,748 pounds of  
27 nitric acid.  
28
- 29 22. During calendar year 2008, the Facility otherwise used approximately 27,018 pounds of  
30 nitric acid.  
31  
32

- 1 23. The quantity of nitric acid that Respondent otherwise used at the Facility during calendar  
2 years 2005 through 2008 exceeded the established threshold of 10,000 pounds set forth at 40  
3 C.F.R. § 372.25(b).  
4
- 5 24. Respondent was required to submit a Form R for nitric acid processed during calendar years  
6 2005 through 2008 at the Facility to the EPA Administrator and to the State of California on  
7 or before July 1<sup>st</sup>, 2006, 2007, 2008 and 2009, respectively.  
8
- 9 25. Respondent failed to submit a Form R for nitric acid processed during calendar years 2005  
10 through 2008 at the Facility to the EPA Administrator and to the State of California on or  
11 before July 1<sup>st</sup>, 2006, 2007, 2008, and 2009, respectively.  
12
- 13 26. Respondent's failure to submit a timely Form R for nitric acid that Respondent otherwise  
14 used at the Facility during calendar years 2005 through 2008 constitutes four violations of  
15 Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.  
16

17  
18 Counts 5-8

- 19 27. Paragraphs 1 through 16 are realleged and incorporated herein by reference.  
20
- 21 28. Nitrate Compounds is a chemical listed under 40 C.F.R. § 372.65, EPA Chemical Category  
22 No. N511.  
23
- 24 29. Nitrate Compounds are produced at the Facility, and are therefore considered  
25 "manufactured" pursuant to 40 C.F.R. § 372.3.
- 26 30. During calendar year 2005, the Facility produced approximately 31,657 pounds of nitrate  
27 compounds.  
28
- 29 31. During calendar year 2006, the Facility produced approximately 26,114 pounds of nitrate  
30 compounds.  
31  
32

- 1 32. During calendar year 2007, the Facility produced approximately 32,059 pounds of nitrate  
2 compounds.  
3
- 4 33. During calendar year 2008, the Facility produced approximately 36,474 pounds of nitrate  
5 compounds.  
6
- 7 34. The quantity of nitrate compounds that Respondent processed at the Facility during calendar  
8 years 2005 through 2008 exceeded the established threshold of 25,000 pounds set forth at 40  
9 C.F.R. § 372.25(b).  
10
- 11 35. Respondent was required to submit a Form R for nitrate compounds processed during  
12 calendar years 2005 through 2008 at the Facility to the EPA Administrator and to the State  
13 of California on or before July 1<sup>st</sup>, 2006, 2007, 2008, and 2009, respectively.  
14
- 15 36. Respondent failed to submit a Form R for nitrate compounds processed during calendar  
16 years 2005 through 2008 at the Facility to the EPA Administrator and to the State of  
17 California on or before July 1<sup>st</sup>, 2006, 2007, 2008, and 2009, respectively.  
18
- 19 37. Respondent's failure to submit a timely Form R for nitrate compounds that Respondent  
20 processed at the Facility during calendar years 2005 through 2008 constitutes four violations  
21 of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.  
22

23 **PROPOSED CIVIL PENALTY**  
24

25 Section 325(c) of EPCRA authorizes the Administrator of the United States Environmental  
26 Protection Agency ("EPA") to assess a civil penalty not to exceed \$25,000 for each violation of  
27 Section 313 of EPCRA, 42 U.S.C. § 11045(c). That statutory maximum civil penalty has  
28 subsequently been raised to \$32,500 for each violation of Section 313 of EPCRA that occurred  
29 after March 15, 2004, but on or before January 12, 2009, and \$37,500 for each violation of  
30 Section 313 of EPCRA that occurred after January 12, 2009 pursuant to the Federal Civil  
31  
32

1 Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing  
2 regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

3  
4 Based upon the facts alleged in this Complaint, Complainant requests that the  
5 Administrator assess against the Respondent a civil administrative penalty of up to \$32,500 for  
6 each of the six violations of Section 313 of EPCRA that occurred during the calendar years of  
7 2005 through 2007 and up to \$37,500 for each of the two violations of Section 313 of EPCRA  
8 that occurred during the calendar year 2008.  
9

10  
11 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

12 You have the right to request a formal hearing to contest any material fact set forth in this  
13 Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will  
14 be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and  
15 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties  
16 and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40  
17 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.  
18  
19

20 **You must file a written Answer within thirty (30) days of receiving this Complaint to**  
21 **avoid being found in default, which constitutes an admission of all facts alleged in the**  
22 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**  
23 **assessed without further proceedings.** If you choose to file an Answer, you are required by the  
24 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual  
25 allegations contained in this Complaint to which you have any knowledge. If you have no  
26 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny  
27 any of the allegations in this Complaint will constitute an admission of the undenied allegation.  
28  
29  
30  
31  
32

1 The Answer shall also state the circumstances and arguments, if any, which are alleged to  
2 constitute the grounds of defense, and shall specifically request an administrative hearing, if  
3 desired. If you deny any material fact or raise any affirmative defense, you will be considered to  
4 have requested a hearing.  
5

6 The Answer must be filed with:  
7

8 **Regional Hearing clerk**  
9 **USEPA, Region IX**  
10 **75 Hawthorne Street**  
11 **San Francisco, CA 94105**

12 In addition, please send a copy of the Answer and all other documents filed in this action to:

13 **Ivan Lieben**  
14 **Assistant Regional Counsel**  
15 **Office of Regional Counsel (ORC-2)**  
16 **USEPA, Region IX**  
17 **75 Hawthorne Street**  
18 **San Francisco, CA 94105**

19 Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is  
20 (415) 972-3914.

21 You are further informed that the Consolidated Rules of Practice prohibit any ex parte  
22 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional  
23 Judicial Officer, Administrative Law Judge, or person likely to advise these officials in the  
24 decision of the case, after the Complaint is issued.  
25

26 **INFORMAL SETTLEMENT CONFERENCE**

27 EPA encourages all parties against whom a civil penalty is proposed to pursue the  
28 possibility of settlement through informal conferences. Therefore, whether or not you request a  
29 hearing, you may confer informally with EPA through Mr. Lieben, the EPA attorney assigned to  
30 the case, regarding the facts of this case, the amount of the proposed penalty, and the possibility  
31  
32



1 of settlement. **An informal settlement conference does not, however, affect your obligation**  
2 **to file an Answer to this Complaint.**  
3

4 **ALTERNATIVE DISPUTE RESOLUTION**

5 The parties also may engage in any process within the scope of the Alternative Dispute  
6 Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts.  
7  
8 Dispute resolution using alternative means of dispute resolution does not divest the Presiding  
9 Officer of jurisdiction nor does it automatically stay the preceding.  
10

11 **CONSENT AGREEMENT AND FINAL ORDER**

12 EPA has the authority, where appropriate, to modify the amount of the proposed penalty to  
13 reflect any settlement reached with you in an informal conference or through alternative dispute  
14 resolution. The terms of such an agreement would be embodied in a Consent Agreement and  
15 Final Order. A Consent Agreement signed by the parties would be binding as to all terms and  
16 conditions specified therein for the parties signing the Consent Agreement when the Regional  
17 Judicial Officer signs the Final Order.  
18  
19  
20  
21  
22  
23  
24

25 DATE: 28 SEPTEMBER 2010

  
26 ENRIQUE MANZANILLA

27 Director

28 Communities and Ecosystems Division

29 U.S. Environmental Protection Agency, Region IX  
30  
31  
32

**CERTIFICATE OF SERVICE**

I certify that the original and foregoing Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2010-0029, was filed on September , 2010, with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of:

- (1) the Complaint;
- (2) the Consolidated Rules of Practice, 40 C.F.R. Part 22; and
- (3) 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) (amended), dated April 12, 2001

were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

William Kroese  
Director of Safety & Loss Prevention  
Rockview Dairies, Inc.  
7011 Stewart & Gray Road  
Downey, California 90241-0668

Certified Return Receipt Article No: 7007 0710 0003 6239 7994

Dated: \_\_\_\_\_

9/29/10

Russ Frazer  
TRI Program Enforcement Officer, Toxics Office  
Communities and Ecosystems Division  
United States Environmental Protection Agency  
Region IX