



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

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In the Matter of:

)
) EPA Docket Nos.: CERC-03-2016-0125
) EPCRA-03-2016-0125
) CAA-03-2016-0125
)

Sunshine Pride Dairy, Inc.
801 North Kent Street
Winchester, Virginia 22601,

Respondent.

801 North Kent Street
Winchester, Virginia 22601,

Facility.

)
) Proceedings Pursuant to Sections 103 and
) 109 of the Comprehensive Environmental
) Response, Compensation and Liability
) Act, 42 U.S.C. §§ 9603 and 9609, Sections
) 304, 312 and 325 of the Emergency Planning
) and Community Right-to-Know Act
) (“EPCRA”), 42 U.S.C. §§ 11004, 11022 and
) 11045, and Sections 112(r) and 113 of the
) Clean Air Act, 42 U.S.C. § 7412(r) and 7413
)

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 113(d) of the Clean Air Act, as amended (the “CAA”), 42 U.S.C. § 7413(d). The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated these authorities to the Director of the Hazardous Site Cleanup Division, EPA Region III (“Complainant”). Further, this Consent Agreement is proposed and entered into under the authority provided by 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.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2), (7) and (8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent Sunshine Pride Dairy, Inc. admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FINDINGS OF FACT

5. Respondent is a corporation incorporated in the Commonwealth of Virginia on May 6, 2009.
6. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3, Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61, and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
7. Respondent was the operator of a cheese processing facility located at 801 North Kent Street in Winchester, Virginia 22601 ("the Facility"). The Facility began operations in approximately September 2010 and used an ammonia refrigeration system containing at least 10,000 pounds of anhydrous ammonia in its operations. The Facility ceased cheese processing operations in December 2011. However, Respondent did not drain the anhydrous ammonia from the refrigeration system when it ceased operations. Respondent drained anhydrous ammonia from the refrigeration system on July 18, 2012.
8. On July 4, 2012, a release of anhydrous ammonia occurred from the Facility ("July 4th Release"). On July 17, 2012, another release of anhydrous ammonia occurred from the Facility ("July 17th Release").
9. On April 18, 2013 and February 4, 2014, EPA issued to Quesos La Ricura, Ltd. ("Quesos"), whom EPA believed was the owner and operator of the Facility, two requests for information pursuant to Section 104(e) of CERCLA, in order to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of EPCRA,

42 U.S.C. §§ 11002-11022. Qesos responded to the information requests on May 6, 2013 and March 26, 2014, respectively (“the 104(e) Responses”).

10. On July 28, 2014, EPA issued to Qesos a request for information pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, in order to determine the Facility’s compliance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations, the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68. Qesos responded to the information request on August 27, 2014 (the “114 Response”).

11. Respondent subsequently disavowed some of the information submitted to EPA by Qesos in the 104(e) Responses and the 114 Response, and on April 8, 2016, Respondent submitted supplemental information to EPA concerning the entity owning the Facility, ownership of the land, operation of the Facility, and the July 4th Release and the July 17th Release.

12. Based on information provided by Respondent, Respondent was the operator of the Facility and its ammonia refrigeration system, and another entity, Sunshine Pride, LLC, was the owner of the Facility, including its acreage and building. Qesos is neither the owner nor operator of the Facility, but is an entity related to Respondent.

Count 1

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA – JULY 4, 2012 RELEASE**

13. The findings of fact and conclusions of law contained in Paragraphs 1 through 12 of this CA/FO are incorporated by reference herein as though fully set forth at length.

14. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as the person has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

16. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3, Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.

17. At all times relevant to this CA/FO, Respondent has been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

18. Respondent is an “operator” of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.2 and 355.40.

19. According to the 104(e) Responses and information provided by Respondent, the July 4th Release began at approximately 6:42 a.m. on July 4, 2012.

20. According to the 104(e) Responses and information provided by Respondent, anhydrous ammonia, Chemical Abstract Service (“CAS”) No. 7664-41-7, was released into the compressor room, then vented outdoors by an exhaust fan.

21. Based on information provided by Respondent, EPA estimates that between 100 and 500 pounds of anhydrous ammonia were released from the Facility during the July 4th Release.

22. Respondent did not notify the NRC regarding the July 4th Release.

23. Anhydrous ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

24. The July 4th Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

25. The July 4th Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

26. Respondent failed to immediately notify the NRC of the July 4th Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA - JULY 4, 2012 RELEASE**

27. Respondent's failure to immediately notify the NRC of the July 4th Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

Counts 2-5
**FINDINGS OF FACT RELATED TO THE
VIOLATIONS OF SECTION 304 OF EPCRA - JULY 4, 2012 RELEASE**

28. The findings of fact and conclusions of law contained in Paragraphs 5 through 27 of this CA/FO are incorporated by reference herein as though fully set forth at length.

29. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, require, in relevant part, the owner or operator of a facility to immediately notify the Local Emergency Planning Committee ("LEPC") and the State Emergency Response Commission ("SERC") as soon as he/she has knowledge of a release of a hazardous substance or an extremely hazardous substance ("EHS") in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

30. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, and the release requires immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must provide a written follow-up emergency notice regarding the release to the LEPC and the SERC as soon as practicable.

31. Anhydrous ammonia is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.

32. The SERC for the Facility is the Virginia Department of Environmental Quality, Division of Land Protection and Revitalization, located at 629 East Main Street in Richmond, Virginia.

33. The LEPC for the Facility is the Winchester/Frederick County Office of Emergency Management, located at 1080 Cornerstone Drive in Winchester, Virginia.

34. The July 4th Release required immediate notification to the LEPC and the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

35. Respondent did not notify the SERC of the July 4th Release.
36. Respondent did not notify the LEPC of the July 4th Release.
37. Respondent failed to immediately notify the SERC and the LEPC of the July 4th Release as soon as Respondent knew or should have known that a release of an extremely hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.
38. The July 4th Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Consequently, the owner or operator was required to provide a written follow-up emergency notice to the SERC and the LEPC as soon as practicable, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.
39. Respondent did not provide a written follow-up report regarding the July 4th Release to the SERC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.
40. Respondent did not provide a written follow-up report regarding the July 4th Release to the LEPC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 304 OF EPCRA – JULY 4, 2012 RELEASE**

Count 2

41. Respondent's failure to immediately notify the SERC of the July 4th Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count 3

42. Respondent's failure to immediately notify the LEPC of the July 4th Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count 4

43. Respondent's failure to submit a written follow-up emergency notice to the SERC for the July 4th Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

Count 5

44. Respondent's failure to submit a written follow-up emergency notice to the LEPC for the July 4th Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

Count 6

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA – JULY 17, 2012 RELEASE**

45. The findings of fact and conclusions of law contained in Paragraphs 5 through 44 of this CA/FO are incorporated by reference herein as though fully set forth at length.

46. According to the 104(e) Response and information provided by Respondent, a release of anhydrous ammonia from the Facility began at an unknown time on July 17, 2012. Fire department personnel were dispatched to the Facility due to a report of an ammonia odor.

47. According to the 104(e) Response and information provided by Respondent, the ammonia was released into the compressor room, then vented outdoors by an exhaust fan.

48. According to the 104(e) Response and information subsequently provided by Respondent, the July 17th Release ceased at an unknown time after 8 p.m. on July 17, 2012.

49. Based on information provided by Respondent, EPA estimates that approximately 1548 pounds of anhydrous ammonia were released from the Facility during the July 17th Release.

50. On July 18, 2012, Respondent arranged for a contractor to drain the remaining anhydrous ammonia from the ammonia refrigeration system at the Facility.

51. Respondent did not notify the NRC regarding the July 17th Release.

52. The July 17th Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

53. The July 17th Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

54. Respondent failed to immediately notify the NRC of the July 17th Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA – JULY 17, 2012 RELEASE**

55. Respondent's failure to immediately notify the NRC of the July 17th Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

Counts 7-10
**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 304 OF EPCRA - JULY 17, 2012 RELEASE**

56. The findings of fact and conclusions of law contained in Paragraphs 5 through 55 of this CA/FO are incorporated by reference herein as though fully set forth at length.

57. The July 17th Release required immediate notification to the LEPC and the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

58. Respondent did not notify the SERC of the July 17th Release.

59. Respondent did not notify the LEPC of the July 17th Release.

60. Respondent failed to immediately notify the SERC and the LEPC of the July 17th Release as soon as Respondent knew or should have known that a release of an extremely hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

61. The July 17th Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Consequently, the owner or operator was required to provide a written follow-up

emergency notice to the SERC and the LEPC as soon as practicable, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

62. Respondent did not provide a written follow-up report regarding the July 17th Release to the SERC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

63. Respondent did not provide a written follow-up report regarding the July 17th Release to the LEPC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 304 OF EPCRA - JULY 17, 2012 RELEASE**

Count 7

64. Respondent's failure to immediately notify the SERC of the July 17th Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count 8

65. Respondent's failure to immediately notify the LEPC of the July 17th Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count 9

66. Respondent's failure to submit a written follow-up emergency notice to the SERC for the July 17th Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

Count 10

67. Respondent's failure to submit a written follow-up emergency notice to the LEPC for the July 17th Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

Counts 11-12
FINDINGS OF FACT RELATED TO THE
VIOLATIONS OF SECTION 312 OF EPCRA

68. The findings of fact and conclusions of law contained in Paragraphs 5 through 67 of this CA/FO are incorporated by reference herein as though fully set forth at length.

69. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) 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 EHS is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) 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 SERC, LEPC, and local fire department with jurisdiction over the facility.

70. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 312 of EPCRA that occurs before January 30, 1997. Section 325, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 for each violation of Section 312 of EPCRA that occurs after January 12, 2009.

71. Respondent’s 104(e) Responses indicated that Respondent had present at the Facility one chemical, anhydrous ammonia, in an amount exceeding 10,000 pounds during calendar year 2011.

72. Respondent’s 104(e) Responses indicated that Respondent had present at the Facility one chemical, anhydrous ammonia, in an amount exceeding 10,000 pounds during calendar year 2012.

73. Anhydrous ammonia 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, and is subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

74. The TPQ for anhydrous ammonia is 500 pounds. 40 C.F.R. Part 355, Appendix A.

75. Respondent had present at the Facility during calendar years 2011 and 2012 one chemical in quantities equal to or exceeding its TPQ.

76. The local fire department for the Facility is the Winchester Fire and Rescue, located at 231 East Piccadilly Street in Winchester, Virginia.

77. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2011 by March 1, 2012, identifying ammonia as present at the Facility in a quantity equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

78. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2012 by March 1, 2013, identifying ammonia as present at the Facility in a quantity equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 312 OF EPCRA**

79. The findings of fact and conclusions of law contained in Paragraphs 5 through 78 of this CA/FO are incorporated by reference herein as though fully set forth at length.

80. The 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.

81. From October 9, 2009 through July 18, 2012, when the remaining anhydrous ammonia was drained from the ammonia refrigeration system at the Facility, Respondent was engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

82. At the Facility, Respondent is an “employer” as that term is defined at 29 C.F.R. § 1910.1200(c).

83. From October 9, 2009 through July 18, 2012, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200.

84. From October 9, 2009 through July 18, 2012, Respondent was the operator of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

85. From October 9, 2009 through July 18, 2012, Respondent was required to have an MSDS at the Facility for each hazardous chemical it used, pursuant to 29 C.F.R. § 1910.1200(g).

86. Respondent failed to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar years 2011 and 2012 identifying the total quantity anhydrous ammonia present at the Facility during the calendar years.

Count 11

87. Respondent's failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility complete and accurate Chemical Inventory Forms for the Facility for calendar year 2011 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

Count 12

88. Respondent's failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility complete and accurate Chemical Inventory Forms for the Facility for calendar year 2012 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

89. The violations identified in Counts 11 and 12 are subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Counts 13-16

**FINDINGS OF FACT RELATED TO THE
VIOLATIONS OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

90. The findings of fact and conclusions of law contained in Paragraphs 5 through 89 of this CA/FO are incorporated by reference herein as though fully set forth at length.

91. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

92. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list of regulated substances can be found in 40 C.F.R. § 68.130.

93. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan (“RMP”) that must be submitted to EPA. The RMP must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

94. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996 and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

95. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” as “any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”

96. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

97. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

98. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

99. The Facility is a cheese processing facility containing an ammonia refrigeration system with a maximum capacity of 16,000 pounds of ammonia.

100. The Facility handled and/or stored more than 10,000 pounds of anhydrous ammonia since September 1, 2010, until the ammonia refrigeration system at the Facility was drained on July 18, 2012.

101. Respondent submitted an initial RMP on July 23, 2010.

Count 13

102. Section 68.69(c) of the Chemical Accident Prevention Requirements requires the owner or operator of a stationary source to review standard operating procedures as often as necessary to assure the procedures reflect correct operating practices, include changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. 40 C.F.R. § 68.69(c). In addition, the owner or operator must certify annually that these procedures are current and adequate in accordance with 40 C.F.R. § 68.69(c).

103. Based on information in the 114 Response and from Respondent, EPA determined that Respondent had developed standard operating procedures for its period of operation, but failed to update standard operating procedures to reflect the shutdown of the ammonia refrigeration system in December 2011, in violation of 40 C.F.R. § 68.69(c). Specifically, anhydrous ammonia was present in the receiver after the shutdown, but Respondent lacked standard operating procedures addressing maintenance and inspections of the equipment containing ammonia. EPA also determined that Respondent failed to certify that the procedures were current for calendar year 2012, in violation of 40 C.F.R. § 68.69(c).

104. The duration of this violation was from December 2011 to July 18, 2012, when anhydrous ammonia was drained from the refrigeration system.

Count 14

105. Section 68.200 of the Chemical Accident Prevention Requirements requires an owner or operator of a stationary source to maintain records supporting the implementation of Part 68 for five years unless otherwise provided. 40 C.F.R. § 68.200.

106. EPA requested of Respondent, and Respondent was unable to provide, records relating to the following provisions of the Chemical Accident Prevention Provisions, in violation of 40 C.F.R. § 68.200:

- a. Training. The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph [40 C.F.R. § 68.71]. The owner or operator shall prepare a record which contains the identity of employee, date of

training, and the means used to verify that the employee understand the training. 40 C.F.R. § 68.71.

- b. Emergency Response Plans. Emergency response plans must be maintained at the stationary source and must contain procedures for informing the public and local emergency response agencies about accidental releases and procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of change. 40 C.F.R § 68.95(a)(1) and (4).

107. The duration of this violation was from July 1, 2011 to July 18, 2012, when anhydrous ammonia was drained from the refrigeration system.

Count 15

108. The Chemical Accident Prevention Provisions require an owner or operator to perform inspections and testing on process equipment. 40 C.F.R § 68.73(d)(1). Inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R § 68.73(d)(2). The frequency of inspections and tests of process equipment must be consistent with applicable manufacturers' recommendations and good engineering practices. 40 C.F.R. § 68.73(d)(3).

109. Applicable recognized and generally accepted good engineering practices for testing and maintenance of ammonia refrigeration systems are set forth in the International Institute for Ammonia Refrigeration ("IIAR") Bulletin 110, *Guidelines for Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigeration Systems* (1993). According to IIAR Bulletin 110, observations of the system must be made daily and a log kept (Section 6.2); checks of the external appearance of pressure vessels, such as receivers, must be made for deterioration (Section 6.4.2.1); and vessels must be annually inspected (Section 6.4.3).

110. Based on the 114 Response and information provided by Respondent, EPA determined that Respondent did not keep a log of daily observations of the anhydrous ammonia refrigeration system in accordance with Section 6.2 of IIAR Bulletin 110; did not make checks for deterioration of the receiver, a pressure vessel, in accordance with Section 6.4.2.1 of IIAR Bulletin 110; and did not annually inspect the receiver in accordance with Section 6.4.3 of IIAR Bulletin 110.

111. Based on the 114 Response and information provided by Respondent, EPA determined that Respondent did not perform inspection and testing of process equipment containing anhydrous ammonia consistent with good engineering practices, *i.e.* the safety

standards set forth in Sections 6.2, 6.4.2.1 and 6.4.3 of IIAR Bulletin 110, in violation of 40 C.F.R. § 68.73(d)(1)-(3).

112. The duration of this violation was from July 1, 2011 to July 18, 2012, when anhydrous ammonia was drained from the refrigeration system.

Count 16

113. Section 68.190 of the Chemical Accident Prevention Provisions requires an owner or operator to submit a de-registration to EPA within six months of the date that a stationary source is no longer subject to Part 68. 40 C.F.R. § 68.190.

114. Respondent had ammonia drained from the ammonia refrigeration system at the Facility on July 18, 2012. After the ammonia was drained from the system, Respondent's stationary source, the ammonia refrigeration system was no longer subject to the Chemical Accident Prevention Provisions. Respondent was required to submit a de-registration to EPA within six months, *i.e.* by January 18, 2013, in accordance with 40 C.F.R. § 68.190.

115. Respondent did not submit a de-registration to EPA until over three years later, on September 18, 2015, in violation of 40 C.F.R. § 68.190.

116. The duration of this violation was from January 18, 2013 through September 18, 2015.

CONCLUSIONS OF LAW RELATED TO THE VIOLATIONS OF SECTION 112(r) OF THE CLEAN AIR ACT

117. The findings of fact and conclusions of law contained in Paragraphs 5 through 116 of this CA/FO are incorporated by reference herein as though fully set forth at length.

118. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA, 42 U.S.C. § 7412(r)(2) and (3), and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

119. At all times relevant to this Consent Agreement, anhydrous ammonia has been present in a process at the Facility in an amount exceeding its threshold quantity.

120. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

121. Respondent has been the owner and operator of a “stationary source,” as the term is defined at 40 C.F.R. § 68.3, since at least 2009.

122. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

123. The Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

124. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to meet the requirements of Subparts D and G of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, as set forth in Counts 13 (standard operating procedures), Count 14 (recordkeeping), Count 15 (mechanical integrity), and Count 16 (de-registration), above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

125. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, in the amount of \$27,189 (“CERCLA civil penalty”), a civil penalty for violations of Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022, in the amount of \$115,572 (“EPCRA civil penalty”), and a civil penalty for violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), in the amount of \$36,313 (“CAA civil penalty”), as set forth above, for a total penalty of \$179,074.

126. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

127. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the CERCLA civil penalty of \$27,189, the EPCRA civil penalty of \$115,572, and the CAA civil penalty of \$36,313, or a total civil penalty of \$179,074, no later than thirty (30) days after the effective date of the Final Order (the “Final Due Date”) by either cashier’s check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

128. Payment of the CERCLA 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, **CERC-03-2016-0125**;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electric 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:

U.S. 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. Online Payment Option:

WWW.PAY.GOV/PAYGOV

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

- i. Additional payment guidance is available at:

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

129. Payment of the \$115,572 EPCRA civil penalty and \$36,313 CAA civil penalty, totaling \$151,855, 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, **EPCRA-03-2016-0125; CAA-03-2016-0125;**
- 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: Heather Russell (513-487-2044)

- 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: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. 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:

U.S. 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. Online Payment Option:

WWW.PAY.GOV/PAYGOV

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

i. Additional payment guidance is available at:

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

130. Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

131. The CERCLA and EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. The penalty is consistent with 40 C.F.R. Part 19 and 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 30, 1999).

132. The CAA Penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

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

134. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent.

However, EPA will not seek to recover interest on any amount of the civil penalties 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).

135. 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 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 penalties remain unpaid.

136. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain 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).

137. Failure by Respondent to pay the CERCLA, EPCRA and CAA civil penalties 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 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

138. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

139. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing 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 the Consent Agreement and accompanying Final Order.

140. This CA/FO resolves only the civil penalty claims for the specific violations alleged in this Consent Agreement. Complainant reserves the right to commence action against any person, including 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 CA/FO shall be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under CERCLA, EPCRA, and the CAA the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

141. By signing this Consent Agreement, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

142. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

143. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

144. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.


145. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

146. Each party to this action shall bear its own costs and attorney's fees.

In the Matter of: Sunshine Pride Dairy, Inc.

EPA Docket Nos.: CERC-03-2016-0125
EPCRA-03-2016-0125
CAA-03-2016-0125

FOR SUNSHINE PRIDE DAIRY, INC.



Ester Alvarado
President

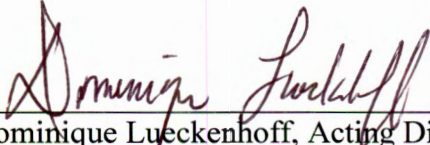


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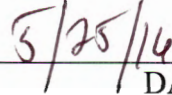
In the Matter of: Sunshine Pride Dairy, Inc.

EPA Docket Nos.: CERC-03-2016-0125
EPCRA-03-2016-0125
CAA-03-2016-0125

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Dominique Lueckenhoff, Acting Director
Hazardous Site Cleanup Division



DATE

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION III

In the Matter of:	)	EPA Docket Nos.: CERC-03-2016-0125
	)	EPCRA-03-2016-0125
	)	CAA-03-2016-0125
)	
Sunshine Pride Dairy, Inc.)	
801 North Kent Street	)	Proceedings Pursuant to Sections 103 and
Winchester, Virginia 22601,	)	109 of the Comprehensive Environmental
	)	Response, Compensation and Liability
Respondent.	)	Act, 42 U.S.C. §§ 9603 and 9609, Sections
	)	304, 312 and 325 of the Emergency Planning
801 North Kent Street	)	and Community Right-to-Know Act
Winchester, Virginia 22601,	)	(“EPCRA”), 42 U.S.C. §§ 11004, 11022 and
	)	11045, and Sections 112(r) and 113 of the
Facility.	)	Clean Air Act, 42 U.S.C. § 7412(r) and 7413
)	

FINAL ORDER

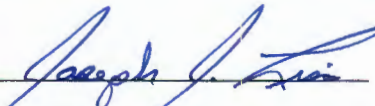
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Sunshine Pride Dairy, Inc., have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *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 30, 1999), and the statutory factors set forth in Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and the statutory factors set forth in Section 113(e) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(e), and EPA’s *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012).

NOW, THEREFORE, PURSUANT TO Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **ONE HUNDRED SEVENTY-NINE THOUSAND AND SEVENTY-FOUR DOLLARS (\$179,074)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

June 1, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III



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

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REGION III, PHILA. PA

In the Matter of:

) EPA Docket Nos.: CERC-03-2016-0125
) EPCRA-03-2016-0125
) CAA-03-2016-0125
)

Sunshine Pride Dairy, Inc.
801 North Kent Street
Winchester, Virginia 22601,

Respondent.

801 North Kent Street
Winchester, Virginia 22601,

Facility.

) CERTIFICATE OF SERVICE
)
)
)
)

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via overnight mail

Samuel L. Brown, Esquire
Hunton & Williams LLP
575 Market Street, Suite 3700
San Francisco, CA 94105

6/2/16

Date

Cynthia T. Weiss

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel