

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

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PHILADELPHIA

In the Matter of:)	
)	
Land-O-Sun Dairies, LLC)	U.S. EPA Docket No: CAA-03-2010-0006
1505 Robin Hood Road)	
Richmond, Virginia 23220-1001,)	
)	
Respondent.)	
)	
PET Dairy)	
1505 Robin Hood Road)	CONSENT AGREEMENT AND
Richmond, Virginia 23220-1001,)	FINAL ORDER
)	
Facility.)	
)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113 of the Clean Air Act, as amended, ("CAA"), 42 U.S.C. § 7413, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

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 "CAFO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

FINDINGS OF FACT

EPA finds as follows:

1. Land-O-Sun Dairies, LLC (“Respondent”) is a limited liability company organized as Land-O-Sun, Inc., in the State of Delaware on December 9, 1999. The name of Land-O-Sun, LLC changed to Land-O-Sun Dairies, LLC on January 6, 2000.

2. Respondent does business as PET Dairy at a facility located at 1505 Robin Hood Road in Richmond, Virginia (the “Facility”).

3. Respondent has owned and operated the Facility since February 21, 2008.

4. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

5. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 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 that must be submitted to EPA. The risk management plan 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.

6. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a Risk Management Plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

7. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the United

States to commence an action to assess civil penalties of not more than \$25,000.00 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$32,500.00 per day for each violation of Section 112(r) of the CAA that occurs between March 15, 2004 and January 12, 2009, and \$37,500.00 per day for each violation that occurs after January 12, 2009.

8. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

9. 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, 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.

10. 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, in 40 C.F.R. § 68.130.

11. 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.

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

13. Respondent is and has been the owner or operator of a “stationary source,” as the term is defined at 40 C.F.R. § 68.3, since February 21, 2008.

14. Ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

15. Information reviewed shows that the Facility has exceeded the threshold quantity for ammonia since February 21, 2008, and at all times relevant to this Consent Agreement.

16. 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, Subpart G, because it is the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

17. Respondent was required under Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop, implement and submit to EPA, a risk management plan that includes a hazard assessment, a prevention program, and an emergency response program.

18. Respondent submitted a Risk Management Plan for the Facility to EPA on or about January 21, 2009.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

19. 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 develop, implement and submit a Risk Management Plan for the Facility no later than June 21, 1999, three years after the date on which ammonia was listed under 40 C.F.R. § 68.130, or the date on which ammonia was first present above a threshold quantity in a process at the Facility, through January 21, 2009.

CIVIL PENALTY

20. In settlement of the above-captioned action for the violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), set forth above, Respondent agrees to pay a civil penalty of Eleven Thousand One Hundred Seventy-Four Dollars and Thirty-Two Cents (\$11,174.32), plus any applicable interest, as described below, in satisfaction of all claims for civil penalties for the violation alleged in this CAFO. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO.

PAYMENT TERMS

21. 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 or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.

22. Interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of such CAFO is mailed or hand-delivered to the Respondent ("Interest Accrual Date"). EPA does not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such 30 calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).

23. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

24. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains 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).

25. Payment of the civil penalty amount \$11,174.32, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2010-0006;
- 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
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
US 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:

US 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. On-Line 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

- j. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Cynthia T. Weiss,
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

26. The CAA 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 113(e) of CERCLA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Response Policy for Section 112(r) of the Clean Air Act (August 15, 2001)*.

27. Failure by the Respondent to pay the penalty 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 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the \$11,174.32 penalty shall not be subject to review.

GENERAL PROVISIONS

28. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

29. Respondent agrees not to contest the EPA's jurisdiction with respect to the execution or enforcement of the CAFO.

30. Except as provided in Paragraph 28 above, for the purpose of this proceeding Respondent neither admits nor denies factual allegations and conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

31. For purposes of this proceeding, Respondent expressly waives its right to a hearing and to appeal this Final Order under Section 113 of the CAA, 42 U.S.C. § 7413.

32. Respondent certifies by the signing of this CAFO that to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

33. The provisions of the CAFO 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 the 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.

34. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 112 of the CAA, 42 U.S.C. § 7412, or any regulations promulgated thereunder.

35. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CAFO for alleged violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the 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 CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.

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

In re Land-O-Sun Dairies, LLC d/b/a PET Dairy

U.S. EPA Docket No. CAA-03-2010-0006

FOR LAND-O-SUN DAIRIES, LLC

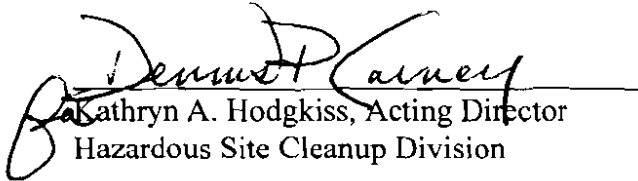


Name: Edward Herman

11/13/09
DATE

Title: Authorized Signatory for Land-O-Sun Dairies, LLC

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY


Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

12/4/09
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

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PET Dairy)
1505 Robin Hood Road) CONSENT AGREEMENT AND
Richmond, Virginia 23220-1001) FINAL ORDER
)
Facility.)
)
)

FINAL ORDER


Pursuant to Sections 112(r)(7) and 113 of the Clean Air Act, as amended, 42 U.S.C. §§ 7412(r)(7) and 7413, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/9/09


Renée Sarajian
Regional Judicial Officer
EPA, Region III