

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket Nos. CERCLA-05-2023-0008</b>
	)	<b>- EPCRA-05-2023-0009</b>
<b>Michigan Milk Producers</b>	)	
<b>Association</b>	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Constantine, Michigan,</b>	)	<b>Section 109(b) of the Comprehensive</b>
<b>Respondent.</b>	)	<b>Environmental Response, Compensation and</b>
	)	<b>Liability Act, and Section 325(b)(2) of the</b>
	)	<b>Emergency Planning and Community Right-</b>
	)	<b>to-Know Act of 1986</b>
	)	

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**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Michigan Milk Producers Association, a Michigan not for profit corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$67,544 per day of violation, for violations of CERCLA Section 103, and EPCRA Section 304, that occurred after November 2, 2015, and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 125 Depot Street, Constantine, Michigan (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent's facility consists of a building, structure, installation, equipment, pipe, or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia (CAS #7664-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this CAFO, Respondent produced, used, or stored anhydrous ammonia at the facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On July 22, 2022, at or about 12:15 a.m., a release occurred from Respondent’s facility of approximately 1,110 pounds of anhydrous ammonia (the release).

32. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

33. During the release, approximately 1,110 pounds of anhydrous ammonia spilled, leaked, pumped, discharged, or escaped into the ambient air.

34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the release on July 22, 2022, at approximately 12:15 a.m.

37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The release was likely to affect Michigan.

40. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The release was likely to affect St. Joseph County, Michigan.