UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

MAY 10 2017

Via ELECTRONIC MAIL
***kfarris@hilanddairy.com*; and**
CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article No.: 7014 1200 0000 6128 0899

Karl Farris
Hiland Dairy Foods
P.O. Box 2270
Springfield, Missouri 65801

Re: Consent Agreement and Final Order
In the Matter of Belfonte Ice Cream Company
EPA Docket No. EPCRA-07-2017-0141

Dear Mr. Farris:

Enclosed, please find the Consent Agreement and Final Order (CAFO) to settle Belfonte Ice Cream Company's violations of the Emergency Planning and Community Right-to-Know Act. Upon its filing with the Regional Hearing Clerk, this document will simultaneously initiate and conclude the matter. Should you have any requested revisions to or questions concerning the enclosed CAFO, please contact me within 10 calendar days of your receipt to discuss. If the CAFO is acceptable to you, it should be signed by someone authorized to sign on behalf of Belfonte Ice Cream Company and returned in its entirety to me within 10 calendar days of your receipt at the following address:

Clarissa Howley Mills
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

After the executed CAFO is returned to me, it will be routed to the appropriate officials at EPA for their signatures and then executed by the Regional Judicial Officer. The Regional Hearing Clerk will email you a copy of the executed order. As stated in the CAFO, the penalty is due within 30 calendar days from the effective date of the executed order. Instructions on how to make the penalty payment can also be found in the CAFO. Copies of the payment check should be forwarded to me, Terri Blunk and to the Regional Hearing Clerk, as set forth in the CAFO.

Printed on Recycled Paper

If you have any questions or wish to discuss this matter further, please contact me at (913) 551-7743. Thank you for your cooperation in this matter.

Sincerely,

Clarissa Howley Mills
Assistant Regional Counsel

Enclosure

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	**Docket No. EPCRA-07-2017-0141**
Belfonte Ice Cream Company,	)	
	)	
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and Belfonte Ice Cream Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the emergency release notification requirements of Section 304 of EPCRA, 42 U.S.C. § 1104.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent is Belfonte Ice Cream Company, a company formed under the laws of the State of Missouri and located at: 1511 Brooklyn Avenue, Kansas City, Missouri 64127 (the Facility).

Statutory and Regulatory Background

5. Congress passed EPCRA in 1986 in response to growing concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals.

6. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored, and at which there is a release of a reportable quantity of any extremely hazardous substance listed in 40 C.F.R. § 302.4 Appendix A pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002, and such release requires a notification under Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603(a), to immediately provide notice as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b).

7. Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), provides that the notice required pursuant to Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), shall be given immediately after the release 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) for any state likely to be affected by the release as described in Section 304(b)(2) of EPCRA, 42 U.S.C. § 11004(b)(2).

8. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the owner or operator to provide a written followup emergency notice (or notices, as more information becomes available), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), setting forth and updating the information required under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and including additional information with respect to: (1) actions taken to respond to and contain the release; (2) any known or anticipated acute or chronic health risks associated with the release; and (3) where appropriate, advice regarding medical attention necessary for exposed individuals.

9. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), defines "facility" as all 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 (or by any person which controls, is controlled by, or under common control with, such person). For purposes of Section 304 of EPCRA, 42 U.S.C. § 11004, the term includes motor vehicles, rolling stock, and aircraft.

10. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

11. Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), defines "hazardous chemical" as the meaning given to such term by Section 311(e), 42 U.S.C. § 11021(e) of EPCRA. Section 311(e) of EPCRA, 42 U.S.C. § 11049(e), defines "hazardous chemical" as the meaning given to such term by Section 1910.1200(c) of Title 29 of the Code of Federal Regulations, which defines "hazardous chemical" as any chemical which is classified as a physical hazard or a health hazard,

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a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

12. Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines "release" as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance or toxic chemical.

13. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that any person in charge of a facility shall as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to or greater than those determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, immediately notify the National Response Center (NRC) established under the Clean Water Act of such release.

14. Section 325(b)(1) of EPCRA, 42 U.S.C. § 11045(b)(1), authorizes the EPA Administrator to assess a civil penalty of up to $25,000 for each violation of the requirements of Section 304 of EPCRA, 42 U.S.C. § 11004. The EPA has adjusted this figure upward for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Federal Civil Penalties Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, and the implementing regulations found at 40 C.F.R. Part 19, so that a civil penalty of up to $54,789 per violation is now authorized for violations that occurred after November 2, 2015 and are assessed on or after August 1, 2016 but before January 15, 2017.

General Factual Allegations

15. Respondent owned and operated the Facility at all times referred to herein.

16. The Facility is, and at all times referred to herein was, a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

17. Respondent is, and at all times referred to herein was, a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. Anhydrous ammonia is, and at all times referred to herein was, a "hazardous chemical" as that term is defined by Section 1910.1200(c) of Title 29 of the Code of Federal Regulations.

19. Respondent was at all times referred to herein storing and using anhydrous ammonia.

20. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and listed in 40 C.F.R. Part 355, Appendix A, with a reportable quantity of 100 pounds.

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21. On or about July 7, 2016 a "release", as that term is defined by Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), of anhydrous ammonia in excess of 100 pounds occurred at the Facility (the release).

22. The release required notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

23. As a result of the release, EPA requested information from Respondent concerning the release and reporting requirements of Section 103 of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 1104, and received Respondent's completed response on August 12, 2016.

24. As a result of the information obtained by EPA and subsequent investigation, Complainant has determined that Respondent has violated the reporting requirements of Section 304 of EPCRA, 42 U.S.C. § 1104.

Allegations of Violation

25. The Complainant hereby states and alleges that Respondent has violated EPCRA as follows:

Count 1

26. The facts stated in Paragraphs 15 through 24 above are herein incorporated.

27. As a result of the release at the Facility, Respondent was required to immediately provide notice in accordance with Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), to the LEPC for any area likely to be affected by the release and to the SERC for any state likely to be affected by the release.

28. Respondent provided notice to the LEPC concerning the release but failed to notify the SERC of the release for more than nine (9) months after the event.

29. Respondent's failure to immediately notify the SERC in accordance with Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), is a violation of Section 304(a)(1) of EPCRA, 42 U.S.C. § 1104(a)(1).

Count 2

30. The facts stated in Paragraphs 15 through 24 above are herein incorporated.

31. As described in Count 1 and in Paragraphs 15 through 24 above, Respondent was required to provide notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), as a result of the release. Therefore, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), Respondent was required to provide a written followup emergency notice as soon as practicable after the release.

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32. Respondent failed to provide a written followup emergency notice to all affected SERCs and all affected LEPCs for more than nine (9) months after the event.

33. Respondent's failure to provide a written followup emergency notice to all affected SERCs and all affected LEPCs as soon as practicable after the release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

CONSENT AGREEMENT

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits the jurisdictional allegations set forth herein;

(b) neither admits nor denies the specific factual allegations stated herein;

(c) consents to the assessment of a civil penalty, as stated herein;

(d) consents to the issuance of any specified compliance or corrective action order;

(e) consents to any conditions specified herein;

(f) consents to any stated Permit Action;

(g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

37. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Twenty-Nine Thousand Four Hundred Forty-Eight Dollars ($29,448.00), as set forth below.

38. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at *http://www.epa.gov/financial/makepayment.*

39. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

Clarissa Howley Mills, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
mills.clarissa@epa.gov; and

Terri Blunk
Chemical & Oil Release Prevention Branch
Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
blunk.terri@epa.gov.

40. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

41. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.

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Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law.

42. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph directly below.

43. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the EPCRA and its implementing regulations.

44. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the EPCRA and regulations promulgated thereunder.

45. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

46. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

47. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

48. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

49. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

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RESPONDENT
BELFONTE ICE CREAM COMPANY

Date: _____ By: _____

_____
Print Name

_____
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

_____
Rebecca Weber
Director, Air and Waste Management Division

Date: _____

_____
Clarissa Howley Mills
Office of Regional Counsel

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FINAL ORDER

Pursuant to the provisions of Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

_____ _____

Karina Borromeo
Regional Judicial Officer

Date

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