UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Scott W. Shehadey, President
Producers Dairy Foods, Inc.
250 E Belmont Ave
Fresno, CA 93701

APR 26 2019

Subject: Consent Agreement and Final Order, Settlement of CAA § 112(r) and EPCRA § 312 Violations at the Producers Dairy Foods, Inc. Facility in Fresno, CA

Dear Mr. Shehadey:

Please find enclosed the fully executed Consent Agreement and Final Order negotiated between the United States Environmental Protection Agency, Region IX, and Producers Dairy Foods, Inc. concerning its facility located in Fresno, California. The CA/FO simultaneously commences and concludes proceedings concerning violations at the facility of 1) the Risk Management Program contained in the regulations at 40 C.F.R. Part 68, promulgated pursuant to Clean Air Act Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 2) the emergency and hazardous chemical inventory requirements under Section 312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11022.

If you have any questions regarding the CAA or EPCRA requirements applicable to the facility, or concerning the proceedings terminated by the enclosed documents, please contact Mr. Donald Nixon of my staff at (415) 972-3123 or at nixon.donald@epa.gov.

Sincerely,

Enrique Manzanilla, Director
Superfund Division

Enclosure

cc (via email, with enclosure):
Donald Nixon, U.S. EPA
Madeline Gallo, U.S. EPA
Victor Lai, Producers Dairy Foods
Gagan Mahal, Fresno County CUPA

** FILED **
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF: Producers Dairy Foods, Inc. 250 East Belmont Avenue Fresno, CA 93701 Respondent.	**Docket No.** MM-09-2019-0039 **CONSENT AGREEMENT AND FINAL ORDER** **40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Producers Dairy Foods, Inc. ("Respondent").

2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated the following statutes and their implementing regulations: Section 112(r) of the CAA, 42 U.S.C. § 7412(r); and Section 312 of EPCRA, 42 U.S.C. § 11022.

B. GENERAL ALLEGATIONS

3. Respondent owns and operates a facility located at 250 East Belmont Avenue, Fresno, California, 93728 ("Facility"). Respondent produces dairy and other products at its Facility, including milk, cream, sour cream, juice, and other seasonal and specialty items. These products are stored, processed and packaged at the Facility prior to distribution.

4. On February 14, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA and EPCRA.

i. Section 312 of EPCRA

5. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form containing information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 C.F.R. § 370.20(b). This inventory must be submitted by March 1 of each year to the State Emergency Response Commission ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the fire department having jurisdiction over the Facility. 40 C.F.R. § 370.25.

6. Respondent is subject to the powers vested in the EPA Administrator by Section 325 of EPCRA, 42 U.S.C. § 11045.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the assessment of civil penalties for any violation Section 312 of EPCRA, 42 U.S.C. § 11022.

8. The Administrator of EPA has delegated enforcement authority under EPCRA to the Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994 (last revised July 20, 2016). The Regional Administrator, EPA Region IX, has delegated the authority to enforce Section 312 of EPCRA, 42 U.S.C. § 11022, to the Director, Deputy Director, and Assistant Directors of the Superfund Division with delegation R9 1200 TN 100, dated February 11, 2013.

9. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

11. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.

12. At all times relevant to this CA/FO, the Facility used or stored ammonia.

13. Ammonia is an "extremely hazardous chemical" as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. §§ 11021(e) and 11022(c), with a threshold planning quantity of 500 pounds. 40 C.F.R. Part 355, App. A & B.

14. The California Governor's Office of Emergency Service ("Cal OES") is the SERC for the State of California,

15. The SERC established six emergency planning districts. The SERC appointed a LEPC for each planning district. The planning district designated as Cal OES Inland LEPC Region V is the LEPC that includes jurisdiction over Fresno County, which is the County where the Facility is located, in accordance with Section 301 of EPCRA, 42 U.S.C. § 11001.

16. The SERC has delegated some EPCRA reporting requirements, including the requirement to submit hazardous chemical inventory forms and safety data sheets to the Certified Unified

Program Agencies ("CUPA") instead of the SERC/LEPCs. The Fresno County Department of Public Health is the CUPA having jurisdiction over the Facility.

17. The Fresno County Fire Protection District is the fire department having jurisdiction over the Facility.

18. At all times relevant to this CA/FO, the Facility has been subject to Section 312 of EPCRA, 42 U.S.C. § 11022, and had extremely hazardous substances above the applicable thresholds established in 40 C.F.R. § 370.20(b).

ii. Section 112(r) of the CAA

19. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

20. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

21. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

22. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to Regional Administrators with EPA delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated this authority with respect to enforcement of Section 112(r) of the CAA, 42

U.S.C. § 7412(r), to the Director of the Superfund Division, as well as the Director of the Enforcement Division, Region IX, with delegation R9 1265.05A, dated February 11, 2013.

23. In a letter dated February 13, 2019, the United Sates Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initial of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

24. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

25. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

26. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

27. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility that has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as "regulated toxic substances," the TQs are specified at 40 C.F.R. § 68.130, Table 1.

28. Ammonia (anhydrous) is a "regulated toxic substance" listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

29. At all times relevant to this CA/FO, Respondent has and had 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

C. ALLEGED VIOLATIONS

COUNT I
(failure to submit annual chemical inventory forms for 2014, 2015, and 2016)

30. Paragraphs 1 through 29, above are incorporated herein by this reference as if they were set forth here in their entirety.

31. Section 312 of EPCRA, 42 U.S.C. § 11022, requires owners and operators of facilities to submit an annual emergency and hazardous chemical inventory form containing information on ammonia present at the Facility during calendar years 2014, 2015, and 2016 to the Fresno County CUPA by March 1 of each year.

32. Respondent did not submit the annual emergency and hazardous chemical inventory form containing information on ammonia at the Facility by March 1 during calendar years 2014, 2015, or 2016 to the Fresno County CUPA. Therefore, EPA alleges that Respondent failed to submit the completed emergency and hazardous chemical inventory forms to the Fresno County CUPA by March 1 for reporting years 2014, 2015, and 2016, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

COUNT II
(failure to comply with management requirements)

33. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

34. 40 C.F.R. § 68.15(c) requires that when owners or operators assign responsibility for implementing individual requirements of Part 68 to persons other than the person identified under 40 C.F.R § 68.15(b), owners or operators shall document the names or positions of these people and the lines of authority shall be defined through an organization chart or similar document.

35. EPA determined that Respondent did not adequately document its management system with an organization chart or other similar document that shows and assigns responsibility for implementing individual requirements of the RMP.

36. By failing to comply with management requirements, Respondent violated 40 C.F.R. § 68.15(c).

COUNT III

(failure to comply with hazard assessment requirements)

37. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

38. 40 C.F.R. § 68.25 requires that owners or operators shall analyze and report in the RMP one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions.

39. 40 C.F.R. § 68.28 requires that the owner or operator shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in covered processes.

40. At the time of the inspection, Respondent documented its worst-case release scenario and its alternative release scenario in a report dated August 2017.

41. EPA determined that Respondent did not use the correct quantities for its worst-case release scenario and its alternative release scenario.

42. By failing to identify and analyze the appropriate worst-case release scenario and alternative release scenario, Respondent violated 40 C.F.R. §§ 68.25 and 68.28.

COUNT IV
(failure to comply with process safety requirements)

43. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

44. 40 C.F.R. § 68.65(a) requires that owners or operators complete a compilation of written process safety information before conducting any process hazard analysis, including information pertaining to the technology of the process and information pertaining to the equipment in the process.

45. 40 C.F.R. § 68.65(d)(1) specifies that information pertaining to the technology of the process includes the maximum intended inventory.

46. EPA determined that Respondent's process safety information did not include the maximum intended inventory of ammonia at the Facility.

47. 40 C.F.R. §§ 68.65(d)(l)(i) specifies that information pertaining to the equipment in the process includes (i) materials of construction; (ii) piping and instrument diagrams (P&IDs); (iii) electrical classification; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999; and (viii) safety systems (e.g. interlocks detection or suspension systems).

48. EPA determined that two of the P&IDs reviewed, specifically, P&ID titled, "Mechanical Area Sht. #2", dated 3/17/2016 and P&ID titled, "Compressor Details Sht. #1," dated March 17, 2016, did not accurately identify the equipment in the process. EPA also determined that there was no material and energy balance for the equipment in the process, relief valve basis was missing, documentation of safety systems and materials of construction was incomplete, and there was no documentation of design codes and standards employed.

49. 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.

50. EPA determined that some of the anhydrous ammonia pipes, valves and equipment in the Facility were not labeled in accordance with industry standards as reflected in publication A13.1 from the American Society of Mechanical Engineers (ASME) (establishing a common system to assist in identification of hazardous materials conveyed in piping systems and their hazards when released in the environment), Section 5.14.5 of the International Institute of Ammonia Refrigeration ("IIAR")-2 -2014 "Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems" (specifies that ammonia piping mains, headers and branches are to be identified) and Section 4.2 of the IIAR Bulletin No. 114 (2014). "Guidelines for: Identification of Ammonia Refrigeration Piping and System Components" (specifies that component markers bear the name of the equipment they identify, e.g., RECIEVER, ACCUMULATOR, etc.). In addition, EPA determined that the pressure relief valves protecting # 4 Oil Pot, RC10 oil separator, and RC10 Compressor did not include tags to show the date of installation and date of their replacement in accordance with industry standard as reflected in ASME 2013 Boiler and Pressure Vessel Code Section VIII UG-129 (specifying that "[e]ach safety, safety relief, relief, liquid pressure relief, and pilot-operated pressure relief valve NPS 1/2 (DN 15) and larger shall be plainly marked by the Manufacturer or Assembler with the required data in such a way that the marking will not be obliterated in service. The marking may be placed on the valve or on a metal plate or plates securely fastened to the valve. ...year built, or alternatively, a coding may be marked on the valve such that the valve Manufacturer or Assembler can identify the year the valve was assembled or tested...").

51. By failing to maintain accurate information pertaining to written process safety information before conducting any process hazardous analysis and failing to document that equipment complies with RAGAGEP, Respondent violated 40 C.F.R. § 68.65.

COUNT V
(failure to comply with process hazard analysis requirements)

52. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

53. 40 C.F.R. § 68.67 requires that owners or operators perform a Process Hazard Analysis ("PHA") and sets forth the process by which the PHA will be conducted.

54. 40 C.F.R. § 68.67(c) requires that the PHA address engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

55. EPA determined that Respondent did not adequately address engineering and administrative controls in that inappropriate safeguards were used in Respondent's August 11, 2017 PHA report.

56. 40 C.F.R. § 68.67(e) requires that owners or operators establish a system to promptly address the findings and recommendations in the PHA; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed.

57. EPA determined that Respondent did not adequately address the findings and recommendations identified in the August 11, 2017 PHA report.

58. 40 C.F.R. § 68.67(f) requires that owners or operators update and revalidate the PHA every five (5) years after the completion of the initial PHA.

59. After the June 29, 2011 PHA update, the next update was due June 2016, but it was instead completed on August 11, 2017, making it one year and two months past the five-year update requirement.

60. By failing to comply with process hazard analysis requirements, Respondent violated 40 C.F.R. § 68.67.

COUNT VI
(failure to comply with operating procedure requirements)

61. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

62. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address certain elements including safety systems and their functions.

63. EPA determined that Respondent's operating procedure titled SOP-9 (Reciprocating Compressor Manual Startup) did not provide clear instructions and did not address certain element such as ammonia detectors and system alarms and interlocks.

64. 40 C.F.R. § 68.69(c) requires that owners or operators review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources; and further, certify annually that these operating procedures are current and accurate.

65. EPA determined that Respondent did not certify its operating procedures for twenty-six operating procedures in 2014, 2015, 2016 and 2017.

66. By failing to comply with operating procedures requirements, Respondent violated 40 C.F.R. § 68.69.

COUNT VII
(failure to comply with mechanical integrity requirements)

67. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

68. 40 C.F.R. § 68.73 address mechanical integrity requirements.

69. 40 C.F.R. § 68.73(d) requires that owners or operators perform inspections and tests on process equipment.

70. 40 C.F.R. § 68.73(d)(3) specifies that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

71. 40 C.F.R. § 68.73(d)(4) specifies that the owner or operator shall document each inspection and test that has been performed on process equipment.

72. EPA determined that Respondent had not replaced or inspected and tested (i.e., recertified) some of the Facility's equipment within a five-year period from installation consistent with RAGAGEP, as reflected in IIAR Bulletin 110 "Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems", Section 6.4.4.1 (providing "At least every five (5) years, the annual inspection of the vessels and heat exchangers shall be carried out by a competent person independent of immediate commercial and production pressures for that installation, who shall carry out whatever examinations and tests he may consider necessary in order to determine that the equipment is safe for further use or in order to specify such repairs that may be necessary. Special attention should be paid to possible deterioration of areas around supports, particularly of horizontal vessels and the attachments to the vessels. Any inspection of heat exchangers should include tubes and tube-plates whether or not the refrigerant passes through

the tubes)"; and IIAR Bulletin 109, "Minimum Safety Criteria for a Safe Ammonia Refrigeration Systems" Section 5.2 (providing "[e]ach owner should ensure an ammonia system safety check is conducted annually."

73. 40 C.F.R. § 68.73(e) requires that owners or operators correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

74. EPA determined that Respondent had not corrected a significant number of deficiencies that were outside acceptable limits identified in the report provided by the Facility's contractor dated February 18, 2013 IIAR 109 Report in a safe and timely manner.

75. By failing to comply with mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73.

COUNT VIII
(failure to comply with compliance audit requirements)

76. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

77. 40 C.F.R. § 68.79(a) (Compliance Audits) requires owners or operators certify that they have evaluated compliance with the provisions of this subpart at least every three (3) years to verify that procedures and practices developed under this subpart are adequate and are being followed.

78. 40 C.F.R. § 68.79(d) requires that owners or operators promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

79. Respondent documented its most recent compliance audits in reports dated August 21, 2014 and July 27, 2017.

80. EPA determined that Respondent did not document that the deficiencies identified in the 2014 and 2017 compliance audit reports were documented with an appropriate response to each of the findings of the compliance audit and did not document that deficiencies identified have been corrected.

81. By failing to promptly determine and document and appropriate response to each of the findings of the compliance audits, Respondent violated 40 C.F.R. § 68.79.

COUNT IX
(failure to comply with incident investigation requirements)

82. Paragraphs 1 through 29, above, are incorporated herein by this reference as if they were set forth here in their entirety.

83. 40 C.F.R. §§ 68.81(a) and (d) specify that where there has been an incident which resulted in, or could have reasonably have resulted in, a catastrophic release of a regulated substance, the owner or operator investigate each incident and prepare a report at the conclusion of the investigation which includes at a minimum the date of the incident and the date the incident investigation began.

84. 40 C.F.R. § 68.81(e) requires that the owner or operator establish a system to promptly address and resolve the incident report findings and recommendations and document resolutions and corrective action.

85. EPA determined that Respondent did not include the date investigation began on its incident report for an ammonia release that occurred on September 29, 2017.

86. By failing to comply with the incident investigation requirements, Respondent violated 40 C.F.R. § 68.81.

D. CIVIL PENALTY

87. EPA proposes that Respondent be assessed, and Respondent agrees to pay **EIGHTY-NINE THOUSAND NINE HUNDRED SIXTY DOLLARS ($89,960.00)**, as the civil penalty for the violations alleged herein.

88. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, 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" dated September 30, 1999, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

89. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO. For the purposes of this proceeding, Respondent consents to the conditions, including the performance of Supplemental Environmental Projects, specified in this CA/FO.

90. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the

factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

91. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

92. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) has been paid, the Supplemental Environmental Project has been completed, and any delays in performance and/or stipulated penalties have been resolved.

93. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

94. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

95. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. COMPLIANCE TASKS

96. All submissions to EPA in this section shall be to Donald Nixon at EPA at nixon.donald@epa.gov.

97. Within sixty (60) days, submit to EPA documentation of materials of construction for the ammonia system.

98. At the time of the next PHA revalidation, submit to EPA a certification that the revised instructions regarding Engineering and Administrative Controls, as updated in the PHA policy/procedure dated March 6, 2019, were followed.

99. Within sixty (60) days of completion of addressing the 2017 PHA findings, certify to EPA that all remaining findings have been addressed in accordance with the schedule.

100. Within sixty (60) days, certify to EPA that all operating procedures are current and accurate.

101. By December 31, 2019, certify to EPA that the recommendations from the report of the results of the August through December 2018 safety and mechanical integrity inspection of the ammonia system have been addressed.

102. Within ninety (90) days, with respect to the 2014 and 2017 Compliance Audits, submit to EPA the following documentation: 1) a list of findings; 2) a description of the resolution of each finding or, where resolution has not occurred, a description of what actions are to be taken and a schedule for completing such actions.

H. PAYMENT OF CIVIL PENALTY

103. Respondent consents to the assessment of and agrees to pay civil penalties of **EIGHTY-NINE THOUSAND NINE HUNDRED SIXTY DOLLARS ($89,960.00)**, in settlement of the civil penalty claims made in this CA/FO.

104. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO having been approved and issued by the Regional Judicial Officer is filed with the Regional Hearing Clerk.

105. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this

action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency

Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pav.gov
Enter "sfol.l" in the search field
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Donald Nixon (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

106. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

107. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. SUPPLEMENTAL ENVIRONMENTAL PROJECT

108. As a condition of settlement, Respondent shall perform the specified supplemental environmental projects ("SEPs") to enhance the emergency response capabilities of the Fresno City Fire Department. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEPs, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

109. The Fresno City Fire Department provides, among other things, hazardous material ("HAZMAT") response services to the City of Fresno, California. In developing the SEPs, Respondent contacted the Fresno City Fire Department and inquired whether it could utilize emergency planning and preparedness assistance to better plan for and respond to spills or releases or other emergency responses. In response to this inquiry, the Fresno City Fire Department requested that Respondent purchase certain protective HAZMAT equipment to improve its ability to respond to chemical spills in Fresno.

110. Within ninety (90) days of the Effective Date of this CA/FO, Respondent shall purchase and make delivery of the following equipment to the Fresno City Fire Department: (a) twelve (12) Level B suits identified as Kappler Zytron suits ($2,400), or similar; (b) two (2) computers with accessories that can run PEAC software and Tech Ref, such as Microsoft Surface Pros, or similar ($4,600); (c) eight (8) sets of in-suit communications, such as Cav Com, or similar ($10,600); and (d) two (2) rescue litters for the rescue of civilian or HAZMAT personnel, such as Cobra Litters, or similar ($8,700).

111. Respondent shall use all reasonable efforts to provide equipment to the Fresno City Fire Department as described above, but may substitute equipment that supports emergency planning and preparedness that is similar in total cost to the equipment described above with the consent of

the Fresno City Fire Department. Any substitutions changing the total amount spent are subject to Paragraphs 128 and 129.

112. Respondent shall expend at least TWENTY-SIX THOUSAND, THREE HUNDRED DOLLARS ($26,300) to complete the SEPs described herein, subject to Paragraphs 128 and 129.

113. Within sixty (60) days of completion of the tasks outlined in Paragraph 110 above, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEPs as implemented with an accounting showing the amount Respondent expended for the implementation of the SEPs and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts, and correspondence with the Fresno City Fire Department; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the SEPs; and (iii) certification that the projects have been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

114. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The SEP Completion Report shall be submitted via hard copy or electronic mail to:

Donald Nixon (SFD-9-3)
Superfund Division

U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Nixon.Donald@epa.gov

115. Failure to complete the SEPs or submit the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Section J below.

116. With regard to the SEPs, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEPs is at least $26,300; (ii) that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum; (iii) that the SEPs are not projects that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CA/FO; (iv) that Respondent has not received and will not receive credit for the SEPs in any other enforcement action; (v) that Respondent will not receive reimbursement for any portion of the SEPs from another person or entity; (vi) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs; and (vii) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEPs described in this CA/FO and has inquired of the Fresno City Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the Fresno City Fire Department that it is not a party to such a transaction.

117. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs under this CA/FO from the date of Respondent's execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

118. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS ($500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS ($1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS ($5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

119. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of THIRTY-NINE THOUSAND, FOUR HUNDRED FIFTY DOLLARS ($39,450) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 122.

120. If Respondent demonstrates that the SEP tasks described in Section I were completed, but Respondent incurs less than ninety (90) percent of the costs required to be incurred pursuant to Section I, Respondent shall pay a stipulated penalty to the United States that is the difference between THIRTY-NINE THOUSAND, FOUR HUNDRED FIFTY DOLLARS ($39,450) and the actual costs incurred by Respondent toward completion of the tasks described in Section I.

121. If Respondent fails to demonstrate that the SEP tasks in Section I were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks;

and (ii) certifies, with supporting documentation, that at least 90 percent of the costs that were required to be incurred pursuant to Section I were incurred for the SEP tasks described in Section I, Respondent shall not be liable for any stipulated penalty under Section J.

122. For failure to submit the SEP Completion Report required by Section I, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS ($500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed of THIRTY-NINE THOUSAND, FOUR HUNDRED FIFTY DOLLARS ($39,450).

123. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

124. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

125. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

126. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

127. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director, Superfund Division, EPA Region IX.

K. RESERVATION OF RIGHTS

128. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA, EPCRA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, EPCRA or any other statutory, regulatory or common law enforcement authority of the United States.

129. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, EPCRA or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

130. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

131. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

L. MISCELLANEOUS

132. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

133. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

134. Each party to this action shall bear its own costs and attorneys' fees.

135. Respondent consents to entry of this CA/FO without further notice.

M. EFFECTIVE DATE

136. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent Producers Dairy Foods, Inc.

DATE: 4/16/19

BY: _____
Name: Scott W. Shehadey
Title: President

United States Environmental Protection Agency, Region 9

DATE: 4/26/19

BY: _____
Enrique Manzanilla
Director, Superfund Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. MM-09-2019-0039) be entered and that Respondent pay a civil penalty EIGHTY-NINE THOUSAND NINE HUNDRED SIXTY DOLLARS ($89,960) due within thirty (30) days from the Effective Date of this CA/FO, implement the compliance tasks described in Section G, and implement the Supplemental Environmental Project described in Section I of this CA/FO, in accordance with all terms and conditions of this CA/FO.

05/03/19
Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original ~~copy~~ of the Consent Agreement & Final Order in the matter of Producers Dairy Foods, Inc., Docket No. MM-09-2019-0039, has been filed by the Regional Hearing Clerk and was served on the following parties as indicated below:

By certified mail, return receipt requested:

Respondent: Scott W. Shehadey, President
Producers Dairy Foods, Inc.
250 E Belmont Ave
Fresno, CA 93701

Certified Mail number: 7003 3110 0006 1998 1632

Hand-delivered to the following U.S. EPA case attorney:

Complainant: Madeline Gallo, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Dated at San Francisco, California, this 8th of May, 2019

Steven Armsey

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105