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Release Reporting/CERCLA Enforcement: U.S. Environmental Protection Agency and Tracy, California, Cheese Manufacturing Facility Enter into Consent Agreement

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The United States Environmental Protection Agency (“EPA”) and Leprino Foods Company (“LFC”) entered into a February 2nd Consent Agreement (“CA”) addressing alleged violations of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). See Docket Nos. CAA(112r)-2024-0003; CERCLA-09-2024-0004; and EPCRA-09-2024-0005.

The CA also addresses alleged violations of the Clean Air Act and the Emergency Planning and Community Right-To-Know Act.

LFC is stated to be the owner of a cheese manufacturing facility (“Facility”) located in Tracy, California.

Section 103 of CERCLA requires the Facility to immediately notify the National Response Center (“NRC”) of any release of hazardous substances in an amount equal to or greater than the reportable quantity (“RQ”) for that substance.

In order for a release to be considered reportable under CERCLA, there are three criteria that must be met which include the following:

- Be into the environment
- Be equal to or exceed the RQ for a particular hazardous substance
- Occur within a 24-hour period

The terms “environment” and “facility” are very broadly defined by CERCLA.

EPA is stated to have conducted an inspection of the Facility on March 22, 2022, to evaluate compliance with CERCLA and the other two referenced federal statutes.

The CA provides that EPA determined during its investigation that LFC notified the NRC 59 minutes after the start of a release of 109 pounds of ammonia from the Facility on March 31, 2021. As a result, the CA alleges that LFC failed to notify the NRC immediately upon having knowledge that a RQ of a hazardous substance had been released at its Facility, violating Section 103 of CERCLA.

The CA describes the following alleged violations:

- Count I – Failure to Immediately Report the March 31, 2021, Ammonia Release to the NRC

- Count II – Failure to Immediately Report the March 31, 2023, Ammonia Release to the California Office of Emergency Services
- Count III – Failure to Document the Alternative Release Scenario
- Count IV – Failure to Compile Design Codes and Standards and to Document that Existing Equipment Complies with Recognized and Generally Accepted Good Engineering Practices or Were Designed and Operating in a Safe Manner
- Count V – Failure to Address Hazards and Identify Adequate Engineering and Administrative Controls Related to the Horizontal, Curvilinear, and Recirculatory Door and to Promptly Respond to process Hazard Analysis Findings and Recommendations
- Count VI – Failure to Complete Annual Certification of Operating Procedures and to Develop and Implement Safe Ice and Snow Removal Procedures for Freezer Roofs, Walls, and Racks
- Count VII – Failure to Maintain Records that Ammonia refrigeration System Operators Understood Trainings on Standard Operating Procedures
- Count VIII – Failure to Correct Deficiencies in Equipment
- Count IX – Failure to Properly Implement and Document the Management of Change Process for the Replacement of Horizontal, Curvilinear, and Recirculatory Door Gaskets
- Count X – Failure to Include Contractors on the 2021 Incident Investigation Team, Recommend Documenting Safe Work Procedures, and Promptly Respond to Recommendations in Incident Investigation Reports
- Count XI – Failure to Adequately Evaluate Contractor Performance and Implement Safe Contractor Work Practices
- Count XII – Failure to Coordinate with Local Authorities, Document Coordination, and Update the Worst-Case Scenario Distance to Endpoint in Emergency Response Planning
- Count XIII – General Duty Clause – Failure to Design and Maintain a Safe Facility

A civil penalty in the amount of \$229,707 is assessed.

A copy of the CA can be downloaded [here](#).