



International Dairy Foods Association

Milk Industry Foundation

National Cheese Institute

International Ice Cream Association

March 14, 2011

Via Federal Express and Email

The Honorable Kathleen Sebelius
Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Secretary Sebelius and Administrator Jackson:

For the past several years IDFA, on behalf of dairy processors, has been working with the Environmental Protection Agency (EPA) to ensure that milk and milk products are exempted from the Spill Prevention, Control, and Countermeasure (SPCC) Regulation. I would like to thank you and your staffs for this dialogue, and look forward to the promulgation of a final exemption very soon.

We appreciate the Administration's efforts to develop a rule to exempt milk and milk product containers but unfortunately believe that the rule, as proposed in January 2009, will not apply consistently across the dairy industry and will result in some dairy facilities being included in the exemption and others excluded. This is because dairy facilities – making not only fluid milk but cheese, ice cream and other dairy products - are subject to a complex system of state and federal regulations and inspections.

The exemption proposed by EPA in January 2009 would still require a substantial portion of dairy facilities to be subject to the SPCC regulation, even though the equipment and milk manufacturing processes are very similar and in some cases identical to the facilities that would be exempted from the SPCC. For example, nearly all dairy processing facilities will have a large storage container to receive milk from dairy farmers. We ask that you ensure that the exemption applies uniformly to all dairy industry facilities.

EPA's proposed exemption is crafted to limit itself to equipment that is constructed to 3-A Sanitary Standards and inspected under the Pasteurized Milk Ordinance (PMO) or a state regulatory equivalent. We explained our comments filed on February 13, 2009, the uneven application of the exemption to dairy facilities is caused by the ambiguity of the term equivalent, the limited reach of the PMO, and the fact the state laws vary greatly.

We suggest that the underpinnings of what has been pursued from the beginning, an exemption for milk and milk product containers that is based on adequate construction and adequate inspection, can be found by working with the Food and Drug Administration's Good Manufacturing Practices (GMPs), specifically 21 CFR 110.40. Those regulations provide ample protection against dairy equipment deteriorating to the point that it would leak or spill. An exemption based on compliance with the GMPs would operate uniformly across the dairy industry and avoid the problems inherent in the EPA draft proposal.

This is an important issue for the dairy industry. As the leader of an association that represents the nation's dairy manufacturing and marketing industries and their suppliers, a \$110-billion a year industry, I urge that the final rule be drafted to uniformly and fairly remove all dairy equipment from the spill prevention rule.

This issue has captured media attention and generated a great deal of legislative concern. We pledge our assistance in resolving this issue and hope that the recommendation above proves helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Connie Tipton".

Connie Tipton
President & CEO