BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2014-0154
UNISEA, INC.,	)	**CONSENT AGREEMENT AND FINAL ORDER**
Dutch Harbor, Alaska,	)	
Respondent.	)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and UniSea, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

2.4. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation organized in the State of Washington and doing business in the State of Alaska.

3.2. Respondent owns and operates a seafood processing facility located at 88 Salmon Way, Dutch Harbor, Alaska (the "facility").

3.3. Section 112(r) of the CAA, and its implementing regulations at 40 C.F.R. Part 68, require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity ("TQ") to develop 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.

3.4. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA and 40 C.F.R. § 68.130.

3.5. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.6. Chlorine is a regulated substance with a TQ of 2,500 pounds, as listed in 40 C.F.R. § 68.130.

3.7. Under 40 C.F.R. § 68.150, any facility that uses, stores, manufactures, or handles more than the TQ of a regulated substance in a single process must submit an RMP to EPA no later than the date on which the regulated substance is first present above the TQ in a single process.

3.8. Respondent has a Program 3 covered process, as defined in 40 C.F.R. § 68.10(d).

3.9. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185 that includes a registration that reflects all covered processes, facilities with a Program 3 covered process shall, among other things, develop and implement a management system as provided in § 68.15, conduct a hazard assessment as provided in §§ 68.20 through 68.42, and implement the prevention requirements of §§ 68.65 to 68.87.

3.10. Respondent has been subject to the RMP requirements since June 21, 1999, the date on which the facility first used, stored, manufactured, or handled more than the TQ of anhydrous ammonia in a single process.

3.11. Respondent became subject to the RMP requirements for chlorine on January 1, 2006, the date on which the facility first used, stored, manufactured, or handled more than the TQ of chlorine in a single process, until at least August 18, 2010, when the facility submitted a revised RMP stating that it had reduced its chlorine inventory to below 2,500 pounds at each covered process.

3.12. Respondent submitted an RMP to EPA on June 18, 1999, June 14, 2004, June 16, 2009, August 18, 2010, and November 12, 2010.

3.13. Respondent's RMP documentation did not include certain of the records related to off-site consequence analysis parameters and off-site impacts regarding population as required by 40 C.F.R. §§ 68.22, 68.30, and 68.39.

3.14. Respondent did not document and maintain the following written process safety information relating to the technology of certain covered processes as required by 40 C.F.R. § 68.65(c): a block flow diagram or simplified process flow diagram for the G2 chlorine process/storage area; maximum intended inventory for the G2 chlorine process/storage area, the Hanger 18 chlorine shipping and receiving area, and the ammonia storage area (bone yard); safe upper and lower limits for such items as temperatures, pressures, flows, and compositions for the G2 chlorine process/storage area; and an evaluation of the consequences of deviation for the ammonia storage area (bone yard), the G1 and G2 ammonia refrigeration systems, the G2 chlorine process/storage area, and the Hanger 18 chlorine shipping and receiving area.

3.15. Respondent did not document and maintain the following written process safety information relating to the equipment in certain covered processes as required by 40 C.F.R. § 86.65(d): materials of construction for the G2 chlorine process/storage area; piping and instrumentation diagrams for the G2 chlorine process/storage area; electrical classification for the G1 and G2 ammonia refrigeration systems; relief system design and design basis for the G1 and G2 ammonia refrigeration systems; ventilation system design for the G1 and G2 ammonia refrigeration systems; design codes and standards employed for the G2 chlorine process/storage area; safety systems for the G2 chlorine process/storage area and the G1and G2 ammonia refrigeration systems; and documentation that equipment complies with recognized and generally accepted good engineering practices for the G2 chlorine process/storage area.

3.16. Respondent did not perform an initial Process Hazard Analysis that identified, evaluated, and controlled the hazards involved in the process for the G2 chlorine process/storage area, the Hanger 18 chlorine shipping and receiving area, and the ammonia storage area (bone yard) as required by 40 C.F.R. § 68.67(a). In addition, with respect to the 2007 PHA for the G1 ammonia refrigeration system, Respondent did not establish a system to promptly address the findings and recommendations of the team as required by 40 C.F.R. § 68.67(d) and did not assure that the recommendations were resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations as required by 40 C.F.R. § 68.67(e).

3.17. Respondent did not 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 as required by 40 C.F.R. § 68.69(a) for the Hanger 18 chlorine shipping and receiving area and the ammonia storage area (bone yard) for the loading and unloading of containers. In addition, Respondent's written operating procedures for the G1 and G2 ammonia refrigeration systems did not include the consequences of deviation and steps required to correct or avoid deviation for operating limits as required by 40 C.F.R. § 68.69(a)(2). In addition, Respondent did not certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary to ensure that they reflect current operating practice as required by 40 C.F.R. § 68.69(c) for the G2 chlorine process/storage area, the Hanger 18 chlorine shipping and receiving area, and the ammonia storage area (bone yard).

3.18. Respondent did not establish and implement written procedures to maintain the ongoing integrity of the G2 chlorine process equipment (piping, valves, detectors, chlorinators, fittings, etc.) as required by 40 C.F.R. § 68.73(b). In addition, Respondent did not have inspection and testing procedures that followed recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.73(d)(2) and that ensured that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience as required by 40 C.F.R. § 68.73(d)(3), specifically relating to maintenance records for the pressure relief valves for the G2 ammonia refrigeration system; maintenance records and procedures for annual inspections of the structural supports, piping, and piping supports of the condensers for the G1 and G2 ammonia refrigeration systems; maintenance records and procedures for the inspection and testing of the ammonia detectors for the G1 and G2 ammonia refrigeration systems; and

procedures for the inspection and testing of the G2 chlorine process equipment (piping, valves, detectors, chlorinators, fittings, etc.).

3.19. Respondent did not retain the two most recent compliance reports for the G1 and G2 ammonia refrigeration systems as required by 40 C.F.R. § 68.79(e).

3.20. Respondent's failure to comply with 40 C.F.R. Part 68 is a violation of CAA Section 112(c) making Respondent subject to penalties pursuant to CAA Section 113 and 40 C.F.R. Part 19.

3.21. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $37,500 per day of violation.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $142,175.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check or proof of other payment method the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Javier Morales
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Morales.javier@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated Permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: 8/12/14

FOR RESPONDENT:

TERRY SCHAFF, President and Chief Executive Officer
UniSea, Inc.

DATED: 8/12/2014

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

V. FINAL ORDER

5.1. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

5.2. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 13th day of August, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: UniSea, Inc., Docket No.: CAA-10-2014-0154**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Terry Shaff
President and CEO
UniSea
15400 NE 90th Street
Redmond, WA 98073-9719

DATED this 14th day of August, 2014.

Candace H. Smith

CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10