

B. GENERAL ALLEGATIONS

3. Respondent owns and operates a facility located at 3140 Ualena Street, Honolulu, Hawaii 96819 (“Facility”). Respondent provides cold storage and distribution and is the largest refrigerated food warehouse in Hawaii.

4. On March 21 and 22, 2019, 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 the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 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.

5. 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.

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

7. 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).

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

of the CAA, 42 U.S.C. § 7412(r), to the Director of the Enforcement Division, Region IX, pursuant to delegation R9-7-6-A, dated February 11, 2013.

9. In a letter dated February 13, 2019, the United States Department of Justice granted EPA a waiver from the condition on administrative actions 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 initiation 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.

10. 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).

11. 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).

12. 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).

13. 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.

14. 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.

15. At all times relevant to this CA/FO, Respondent produced, used or stored 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

C. ALLEGED VIOLATIONS

COUNT I
(Failure to Comply with Management Requirements)

16. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

17. 40 C.F.R. § 68.15(a) requires that owners or operators develop a management system to oversee the implementation of the RMP elements.

18. 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.

19. EPA determined that the Facility's written management system developed to oversee the implementation of the RMP elements was deficient because some components of the system were either out of date or not being implemented.

20. EPA determined that Respondent did not adequately document its management system with an organization chart or other similar document that shows the names or positions responsible for implementing individual requirements of the RMP.

21. By failing to comply with management requirements, Respondent violated 40 C.F.R. § 68.15.

COUNT II

(Failure to Comply with Process Safety Requirements to Compile Information Pertaining to the Technology of the Process and Information Pertaining to the Equipment in the Process)

22. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. 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.

24. 40 C.F.R. § 68.65(c)(1) specifies that information pertaining to the technology of the process include at least the following: (i) a block flow diagram or simplified process flow diagram; (ii) process chemistry; (iii) maximum intended inventory; (iv) safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and (v) an evaluation of the consequences of deviations.

25. EPA determined that Respondent did not have information pertaining to (1) safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and (2) an evaluation of the consequences of deviation.

26. 40 C.F.R. § 68.65(d)(1) specifies that information pertaining to the equipment in the process includes: (i) materials of construction; (ii) piping and instrument diagrams; (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).

27. EPA determined that Respondent did not have information pertaining to materials of construction, relief system design and design basis, and safety systems.

28. By failing to comply with process safety requirements to compile information pertaining to the technology of the process and information pertaining to the equipment in the process, Respondent violated 40 C.F.R. § 68.65.

COUNT III
(Failure to Comply with Process Safety Requirements Related to Generally Accepted Good Engineering Practices)

29. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

30. 40 C.F.R. § 68.65(d)(2) requires that owners or operators 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.

31. 40 C.F.R. § 68.65(d)(3) specifies that for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

32. EPA determined that some of the anhydrous ammonia pipes in the Facility were not labeled in accordance with industry standards as reflected in American National Standards Institute (ANSI)/International Institute of Ammonia Refrigeration (IIR) 2-2014¹ Section 5.14.6 and ANSI/IIR 9-2020 Section 7.2.9.4 (specifying that “[a]mmonia piping mains, headers, and branches shall be identified...”) and Section 3.1 of ANSI/American Society of Mechanical Engineers (ASME) A13.1-2015 (specifying that “[p]ositive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated

¹ Reference to IIR 2-2014 in this CA/FO refers to the updated version Addendum A (2019).

form ... Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard”).

33. EPA determined that an exhaust vent located on the roof of Engine Room 1, a machinery room, was discharging downward under the condenser CN-3 platform, which is not in accordance with Section 6.14.3.4 of ANSI/IIAR 2-2014 (specifying that “machinery room exhaust shall discharge vertically upward”).

34. EPA determined that a ventilation exhaust vent located on the roof of Engine Room 1 is located near the door opening into the building, which is not in accordance with Section 6.14.3.3 of ANSI/IIAR 2-2014 (specifying that “[m]achinery room exhaust shall be to the outdoors not less than 20 ft (6 m) from a property line or openings into buildings”).

35. EPA determined that evaporators in the warehouses and some of the ammonia containing piping, including the piping header in Warehouse 1, were not protected from potential forklift or box strikes, which is not in accordance with Section 7.2.4 of ANSI/IIAR 2-2014 (specifying that “[e]quipment shall be protected where a risk of physical damage exists. Where equipment containing ammonia is located in an area with heavy vehicular traffic during normal operations and a risk of impact exists, vehicle barriers or alternative protection shall be provided in accordance with the Fire Code”) and Section 7.2.12.1 of ANSI/IIAR 9-2020 (specifying that “[w]here ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided.”)

36. EPA determined that the machinery room door from the maintenance shop into Engine Room 1 is not of tightfitting construction, which is not in accordance with Section 6.2.1 of

ANSI/IIAR 2-2014 (specifying that “[t]he machinery room shall be separated from the remainder of the building by tight-fitting construction having a one-hour fire-resistance rating. Doors shall comply with Section 6.10”) and Section 7.3.2.1 of ANSI/IIAR 9-2020 (specifying that “[t]he machinery room shall be separated from the remainder of the building by tight-fitting construction. Doors shall comply with Section 7.3.9.2”).

37. EPA determined that the Engine Rooms 2 and 3 which have machinery room doors to the outdoors are not of tight-fitting construction, which is not in accordance with Section 6.10.2 of ANSI/IIAR 2-2014 (specifying that “[m]achinery room doors shall be self-closing and tight fitting.... Doors to the outdoors shall be fire rated where required by the Building Code based on the fire rating required for exterior wall openings”) and Section 7.3.9.2 of IIAR 9-2020 (specifying that “[m]achinery room doors shall be self-closing and tight fitting.... Doors to the outdoors shall be fire rated based on the fire rating required for exterior wall openings”).

38. EPA determined that the exit doors leading from Engine Room 1 into the hallway and then outside and the exit doors in Engine Rooms 2 and 3 have turn handles, which is not in accordance with Section 6.10.2 of ANSI/IIAR 2-2014 (specifying that “[d]oors that are part of the means of egress shall be equipped with panic hardware”); and the signage on the Engine Room 1 door entrance is not in accordance with Section 6.3.4 of ANSI/IIAR 2-2014 (specifying that “[a]ccess to a machinery room shall be restricted to authorized personnel”) and Section 6.15 of ANSI/IIAR 2-2014 (specifying the requirements for signage).

39. EPA determined that the eyewash/safety shower unit for the engine rooms are not in accordance with Section 6.7.1 of ANSI/IIAR 2-2014 (specifying that “[a] machinery room shall have a minimum of one eyewash/safety shower unit, which shall be located inside the machinery room. A minimum of one eyewash/safety shower unit shall be located outside of the machinery

room. Eyewash/safety shower units shall meet the requirements in Section 6.7.3.”) and Section 7.3.7 of ANSI/IIAR 9-2020 (specifying that “[e]ach machinery room shall have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 7.3.7.3. Additional eyewash/safety shower units shall be installed such that the path of travel in the machinery room is no more than 55 ft to an eyewash/safety shower unit”); and Section 6.7.2 of ANSI/IIAR 2-2014 and Section 7.3.7.2 of ANSI/IIAR 9-2020 (specifying “[t]he path of travel within the machinery room to at least one eyewash/safety shower unit shall be unobstructed and shall not include intervening doors”).

40. EPA determined that the oil drain line and self-closing valve for Oil Pot #1 were disconnected from the oil pot during the inspection and not consistent with Section 5.9.3 of ANSI/IIAR 2-2014 (specifying that “[o]il removal shall be accomplished by one or more of the following: 1. A rigid-piped oil return or transfer system. 2. A vessel equipped with a shut-off valve in series with a self-closing shut-off valve. 3. A valve and piping assembly at the draining point where oil is removed from the system. At a minimum, a shut-off valve in series with a self-closing shutoff valve is required”).

41. Respondent did not document that the existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use were designed, maintained, inspected, tested and operating in a safe manner.

42. By failing to document that equipment that does not comply with RAGAGEP is designed, maintained, inspected, tested, and operating in a safe manner, Respondent violated 40 C.F.R. § 68.65.

COUNT IV
(Failure to Comply with Process Hazard Analysis Requirements)

43. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

44. 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.

45. 40 C.F.R. § 68.67(c) requires that the PHA address hazards of the process and engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

46. EPA determined that the Facility’s 2019 PHA included incorrect hazards of the process and engineering and administrative controls applicable to the hazards and their interrelationships (specifically, incorrect hazards and engineering and administrative controls from forklift or box strikes were identified in Engine Rooms 1 and 3).

47. EPA determined that the Facility’s 2019 PHA included generic safeguards, such as “[o]perating [p]rocedures” and “[t]rained [o]perators,” which do not adequately address potential hazards.

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

COUNT V
(Failure to Comply with Operating Procedure Requirements)

49. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

50. 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 consequences of deviation, steps required to correct or avoid deviation, and safety systems and their functions.

51. EPA determined Respondent's instructions in some of the operating procedures were inconsistent with the installed system, which was upgraded in 2014, and some of the operating procedures failed to include consequences of deviation, the steps required to correct or avoid deviations, and safety systems and their functions.

52. 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.

53. EPA determined that Respondent did not certify that its operating procedures prior to 2018 reflected then-current operating practice.

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

COUNT VI
(Failure to Comply with Training Requirements)

55. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

56. 40 C.F.R. § 68.71(b) requires that refresher training be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

57. 40 C.F.R. § 68.71(c) requires that the owner or operator ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. This provision further requires that the owner or operator prepare a record

which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

58. EPA determined that Respondent failed to document that each employee received required refresher training (at least every three years, and more often if necessary) for the updated operating procedures when the Facility started updating its operating procedures in November 2018.

59. By failing to comply with training requirements, Respondent violated 40 C.F.R. § 68.71.

COUNT VII
(Failure to Comply with Mechanical Integrity Requirements Regarding Written Procedures)

60. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

61. 40 C.F.R. § 68.73(b) requires that owners or operators establish and implement written procedures to maintain the on-going integrity of process equipment.

62. EPA determined that Respondent failed to establish adequate written procedures for daily inspections of equipment based on the Daily Log Sheets and implement such procedures as evidenced by an incomplete Daily Log Sheet provided at the time of the inspection.

63. EPA determined that Respondent failed to establish written procedures for inspection, testing, and maintenance tasks for the Facility's three engine room ventilation systems.

64. By failing to comply with mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73(b).

COUNT VIII
(Failure to Comply with Mechanical Integrity Requirements to Correct Equipment Deficiencies)

65. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

66. 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.

67. EPA determined that Respondent had not corrected equipment deficiencies, including corroded piping with missing insulation and vapor barrier, ice buildup, and areas of water sweating through compromised vapor barriers and damaged insulation in the three engine rooms, warehouses, and outside piping, each of which is outside of acceptable limits as evidenced by Section 53.3.1.1 of National Fire Protection Association (“NFPA”) 1-2018 (specifying that “[r]efrigeration systems shall be operated and maintained in a safe and operable condition, free from accumulation of oil, dirt, waste, excessive corrosion, other debris, or leaks, and in accordance with [American Society of Heating, Refrigerating and Air-Conditioning Engineers] (“ASHRAE”) 15, *Safety Standards for Refrigeration Systems*, and the mechanical code”) and A.11.1.1.2 of IIAR 6 (Appendix A – Explanatory Material) (specifying that “[i]f damage were to occur to the pipe insulation, vapor barrier, or both, the owner should proceed with repairing and/or replacing the damaged pipe insulation and/or vapor barrier in a timely manner if the damage poses an immediate unsafe condition or could develop into an unsafe condition, such as excessive weight loading, to the piping”).

68. By failing to comply with mechanical integrity requirements to correct equipment deficiencies, Respondent violated 40 C.F.R. § 68.73(e).

COUNT IX
(Failure to Comply with Compliance Audit Requirements)

69. Paragraphs 1 through 15, above, are incorporated herein by this reference as if they were set forth here in their entirety.

70. 40 C.F.R. § 68.79(a) requires that owners or operators certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

71. 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.

72. EPA determined that Respondent did not document an appropriate response to each of the findings of the 2017 compliance audit and did not document that deficiencies identified in the 2017 compliance audit have been corrected.

73. By failing to promptly determine and document an appropriate response to each of the findings of the 2017 compliance audit, Respondent violated 40 C.F.R. § 68.79.

D. CIVIL PENALTY

74. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **TWO HUNDRED TEN THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$210,564.00)**, as the civil penalty for the violations alleged herein.

75. 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 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

76. 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.

77. For the purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the 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 and to appeal the proposed Final Order accompanying this Consent Agreement and made part of this CA/FO.

78. Complainant 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

79. 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 has been paid, the compliance tasks required under Section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

80. 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.

81. 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.

82. 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

83. All submissions to EPA in this section shall be in writing and submitted to Cyntia Steiner at EPA at steiner.cyntia@epa.gov.

84. If Respondent is unable to complete any of the compliance tasks required in this Section within the associated schedule, Respondent shall submit a written request for a modification, including the basis for the request, to EPA. Respondent shall submit this request within seven (7) days of identifying a need for a modification. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, the request for modification.

85. Quarterly Progress Reports. Within three (3) months of the Effective Date of the CA/FO, and every three months thereafter until completion of all requirements of this CA/FO, Respondent shall submit a progress report to EPA (“Progress Report”). Each Progress Report shall describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, all significant developments during the current reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

86. Respondent shall implement the work described in the Unicold Ventilation System Upgrade document dated July 28, 2020 that was submitted by Respondent to EPA, in accordance with the schedule provided in the document, and in accordance with ANSI/IIAR 2-2014 Sections 6.14.3.3 and 6.14.3.4 for the Engine Room 1 exhaust ventilation fans. In addition, Respondent shall document the status of implementation of this work in each Progress Report until the work in the Unicold Ventilation System Upgrade document has been completed.

87. As an attachment to the first Progress Report, Respondent shall submit to EPA documentation (including photographs and receipts) and a certification that it has updated the Engine Room 3 eyewash/safety shower unit in accordance with ANSI/IIAR 2-2014 Section 6.7.

88. As an attachment to the first Progress Report, Respondent shall submit to EPA a copy of a revised PHA (the 2020 PHA).

89. As an attachment to the first Progress Report, Respondent shall submit to EPA a copy of the 2019 and 2020 PHA findings and recommendations tracking tables. Until all findings and recommendations have been addressed, Respondent shall include as an attachment to each Progress Report the current tracking table, which shall document the status of findings and recommendations, including actions that have been taken or will be taken; a written schedule of the date these actions are completed or are to be completed; staff assignment; and documentation of communications of the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

90. Respondent shall implement the work described in the Unicold Traffic Guarding Workplan dated July 24, 2020 that was submitted by Respondent to EPA, in accordance with the schedule provided in the workplan and in accordance with ANSI/IIAR 2-2014 Section 7.2.4 and ANSI/IIAR 9-2020 Section 7.2.12.1. Respondent shall document the status of the implementation of the Unicold Traffic Guarding Workplan in each Progress Report until the work in the workplan has been completed.

91. As an attachment to the first Progress Report, Respondent shall submit to EPA documentation (including photographs and receipts) that Engine Rooms 1, 2 and 3 doors are installed and certification that installation is consistent with ANSI/IIAR 9-2020 Section 7.3.9.2.

92. As an attachment to the first Progress Report, Respondent shall submit to EPA certification and documentation (including photographs and receipts) showing that bollards have been installed around the eye wash/safety shower unit outside of Engine Room 3.

93. As an attachment to the first Progress Report, Respondent shall submit to EPA for review and comment a workplan to address the eye wash/safety shower unit in Engine Room 2 per ANSI/IIAR 2-2014 Sections 6.7.1 and 6.7.2 and ANSI/IIAR 9-2020 Section 7.3.7, including schedule, timeline and estimated cost, and implement the work plan in accordance with the schedule. Respondent shall document the status of the workplan in each Progress Report until the work in the workplan has been completed.

94. Respondent shall conduct mechanical integrity (MI) inspections on ammonia containing equipment in the warehouse rooms operated by Respondent, including equipment located in rooms that are locked by tenants, consistent with Chapter 9 (Evaporators) of IIAR 6-2020 and Respondent's MI program. As an attachment to the first Progress Report, Respondent shall submit documentation (including 60 days of inspection records and MI documentation that indicates required inspection frequencies) and certification showing inspections are being completed for all warehouse ammonia containing equipment and piping consistent with Chapter 9 (Evaporators) of ANSI/IIAR 6-2020 and Respondent's MI program.

95. As an attachment to the first Progress Report, Respondent shall submit to EPA for review and comment a workplan for addressing non-engine room corrosion and vapor barrier deficiencies documented in EPA's Inspection Report dated July 10, 2019 and consistent with ANSI/IIAR 9-2020 Section 7.2.6, including schedule, timeline and estimated cost, and implement the workplan in accordance with the schedule. Respondent shall document the status of the workplan in each Progress Report until the work in the workplan has been completed.

96. As an attachment to the first Progress Report, Respondent shall submit to EPA for review and comment a workplan to address compliance of the Low Pressure Receiver and Intercooler in Engine Room 1 consistent with 1) 40 C.F.R. § 68.65(d)(3) and Section 10.1.4 of ANSI/IIAR 6-2020;^[3] or 2) ANSI/IIAR 2-2014 (Nameplates) and 5.3.3.7 of ANSI/IIAR 6-2019 (Manufacturer Data Report), including schedule, timeline and estimated cost, and implement the work plan in accordance with the schedule. Respondent shall document the status of the workplan in each Progress Report until the work in the workplan has been completed.

H. PAYMENT OF CIVIL PENALTY

97. Respondent consents to the assessment of and agrees to pay civil penalties of **TWO HUNDRED TEN THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$210,564.00)**, in settlement of the civil penalty claims made in this CA/FO.

98. 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.

99. All payments shall indicate the name of the Facility, EPA Facility identifier 1000 0003 2458, 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:

^[3] Section.10.1.4.3 of ANSI/IIAR 6-2020 specifies "[w]here no documentation exists for the material of construction, welding procedures, or radiographic testing, an engineering analysis can be conducted as a means of determining that the in-service condition of the pressure vessel is appropriate for its intended safe use. This can also be done for regulated (e.g., PSM/RMP) pressure vessels where no documentation exists. The engineering analysis should be in conformance with the latest editions of codes and standards. The owner should document the engineering analysis results pertaining to its design and also determine and document that the pressure vessel is inspected, tested, maintained, and operating in a safe manner."

Regular Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
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):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006

Environmental Protection Agency

CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 201737

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 via electronic mail 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
R9HearingClerk@epa.gov

and

Cyntia Steiner
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Steiner.Cyntia@epa.gov.

100. 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.

101. 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. DELAY IN PERFORMANCE/STIPULATED PENALTIES

102. 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.

103. 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 Complainant 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.

104. 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. Complainant 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.

105. 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.

106. 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.

J. RESERVATION OF RIGHTS

107. 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 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 or any other statutory, regulatory or common law enforcement authority of the United States.

108. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA 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.

109. 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.

110. 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.

K. MISCELLANEOUS

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

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

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

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

L. EFFECTIVE DATE

115. 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.

In the Matter of Unicold Corporation
Consent Agreement and Final Order

Respondent Unicold Corporation

DATE: 9-11-2020

BY: 
Name: Darryl M. Kawano
Title: Vice President & Chief Operating Officer

In the Matter of Unicold Corporation
Consent Agreement and Final Order

United States Environmental Protection Agency, Region 9

AMY MILLER-
BY: BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2020.09.22
12:20:02 -07'00'

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of Unicold Corporation (Docket No. CAA (112r) 09-2020-0058) be entered and that Respondent shall pay a civil penalty of **TWO HUNDRED TEN THOUSAND FIVE HUNDRED SIXTY-FOUR DOLLARS (\$210,564.00)**, and implement the compliance tasks described in Section G, in accordance with all terms and conditions of this CA/FO.

Date

Steven L. Jawgiel

Digitally signed by Steven L.
Jawgiel

Date: 2020.09.23 10:25:51 -07'00'

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

CERTIFICATE OF SERVICE

This is to certify that the attached Consent Agreement and Final Order in the matter of Unicold Corporation, Docket Number CAA 112(r)-09-2020-0058 has been filed by the Regional Hearing Clerk, and was served on the parties, via electronic mail, as indicated below:

RESPONDENT:

Darryl Kawano
Vice President and Chief Operating Officer
Unicold Corporation
Email: dkwano@unicold.com

COMPLAINANT:

Rebekah Reynolds
Office of Regional Counsel
U.S. EPA - Region IX
Email: reynolds.rebekah@epa.gov

Date: _____

Steven Armsey
Regional Hearing Clerk
U.S. EPA - Region IX