

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Catherine Smith 9/17/14  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CAA-01-2014-0048

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Associated Grocers of New England, Inc.  
11 Cooperative Way  
Pembroke, NH 03275

Total Dollar Amount of Receivable \$ 9,300 Due Date: 10/7/14

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

- INSTALLMENTS OF:
- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
  - 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
  - 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
  - 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
  - 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

September 17, 2014

**VIA HAND DELIVERY**

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109



Re: In the Matter of Associated Grocers of New England, Inc., 11 Cooperative Way,  
Pembroke, New Hampshire  
Docket Number CAA-01-2014-0048

Dear Ms. Santiago:

Enclosed for filing please find the original and one copy of an Expedited Settlement Agreement resolving the above referenced matter and a certificate of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Smith".

Catherine Smith  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I

Enclosure: Expedited Settlement Agreement

cc: Michael C. Bourgoine, Associated Grocers of New England, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

RECEIVED

SEP 17 2014

EPA ORC  
Office of Regional Hearing Clerk

**EXPEDITED SETTLEMENT AGREEMENT**

**DOCKET NO:** CAA-01-2014-0048

**This ESA is issued to:** Associated Grocers of New England, Inc., 11 Cooperative Way,  
Pembroke, NH 03275

**for violating Section 112(r)(7) of the Clean Air Act.**

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This Expedited Settlement Agreement (“ESA”) is being entered into by the United States Environmental Protection Agency (EPA), Region 1, by its duly delegated official, Susan Studlien, Director, Office of Environmental Stewardship, and by Respondent, Associated Grocers of New England, Inc., pursuant to Section 113(a)(3) and (d) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On October 18, 2013, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

On May 22, 2012, authorized representatives of the EPA conducted a compliance inspection of the Respondent’s facility located at 11 Cooperative Way, Pembroke, New Hampshire to determine compliance with the Risk Management Program (“RMP”) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations as noted on the attached “Risk Management Program Inspection Findings, Alleged Violations And Proposed Penalty Form” (“Form”), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent’s size of business, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violation, described in the attached Form, for the total penalty amount of \$9,300.

This settlement is subject to the following terms and conditions:

The Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Form, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed in the attached Form. Respondent agrees to submit payment of the \$9,300 penalty within 20 days of receiving a fully

executed copy of this Settlement Agreement. The Respondent may pay the penalty by cashier's check, certified check, or wire transfer.

If payment is made by check, make payable to "Treasurer, United States of America," include Docket Number CAA-01-2014-0048, and send to:

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

If payment is made by wire transfer, include the Docket Number CAA-01-2014-0048 in Field Tag 6000 and "D 68010727 Environmental Protection Agency" in Field Tag 4200. The wire transfer account is:

Federal Reserve Bank of New York  
33 Liberty Street  
New York NY 10045  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33

Respondent must also send a copy of the check or wire transfer receipt to:

Len Wallace  
Environmental Protection Specialist  
Office of Environmental Stewardship (OES05-1)  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

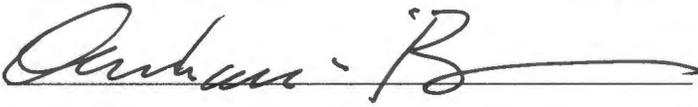
Wanda Santiago  
Regional Hearing Clerk  
Office of Regional Counsel (ORA 18-1)  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above and in the Form. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed ESA is not returned to the EPA Region 1 office at the above address by the Respondent within 30 days of the date of receipt, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violations. If you do not sign and return the ESA and pay the penalty on time, EPA may pursue more formal enforcement measures, including seeking civil penalties of up to \$37,500 per day for each violation. This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

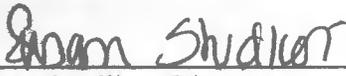


Date: 8/12/14

Name (print): MICHAEL C. BOURGEOIS

Title (print): PRESIDENT + CEO

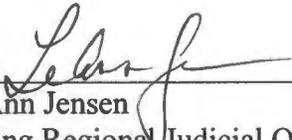
FOR COMPLAINANT:



Date: 09/09/14

Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA Region 1

I hereby ratify the ESA resolving *In the Matter of Associated Grocers of New England, Inc.*, Docket No. CAA-01-2014-0048 and incorporate it herein by reference. It is so ORDERED.



Date: 9/16/14

LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA Region I



**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**RISK MANAGEMENT PROGRAM INSPECTION FINDINGS,**  
**ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM**

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with the accidental release prevention requirements of Section 112(r)(7) of the Clean Air Act (Act), 42 U.S.C. § 7412(r)(7), and the regulations set forth at 40 C.F.R. Part 68. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME: Associated Grocers of New England, Inc.	<input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> GOVERNMENTAL/MUNICIPAL # of EMPLOYEES: 335
FACILITY ADDRESS: 11 Cooperative Way Pembroke, NH 03275	INSPECTION START DATE AND TIME: 5/22/2012  INSPECTION END DATE AND TIME : 5/22/2012
RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER: Michael C. Bourgoine, President/CEO 603.223.5301	EPA FACILITY ID#: 1000 0019 3989
FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S): Jeff Sawyer, ESW Manager 603.223.5350	INSPECTOR NAME(S), TITLE(S): Leonard B. Wallace IV Kelly J. Patten

**INSPECTION FINDINGS**

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR Part 68)?                       YES                       NO

DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185 AND UPDATE THE RMP AS PROVIDED IN 68.190 TO 69.195?  
 YES                      NO

DATE RMP INITIALLY FILED WITH EPA: 1/5/2006                      DATE OF RMP UPDATE: 1/4/2011

1) PROCESS/NAICS CODE:                      47312  REGULATED SUBSTANCE:                      anhydrous ammonia	PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>  MAX. QUANTITY IN PROCESS:                      21,000 lbs
2) PROCESS/NAICS CODE: _____  REGULATED SUBSTANCE: _____	PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>  MAX. QUANTITY IN PROCESS: _____ (lbs)

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?                       YES                       NO

ATTACHED CHECKLIST(S):  
 PROGRAM LEVEL 1 PROCESS CHECKLIST                       PROGRAM LEVEL 2 PROCESS CHECKLIST                       PROGRAM LEVEL 3 PROCESS CHECKLIST

OTHER ATTACHMENTS: \_\_\_\_\_

INSPECTION SYMBOL KEY: Y - YES, N - NO, N/A - NOT APPLICABLE, S - SATISFACTORY, M - MARGINAL, U - UNSATISFACTORY

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE  
BOSTON, MA 02109-3912**

Process Checklist (Findings) and Alleged Violations and Proposed Penalty Form:  
Associated Grocers of New England, Inc., Pembroke, New Hampshire

**1. Program Level 3 Alleged Violations and Unadjusted Penalties**

**Section A – Management [68.15]**

<p>Has the owner or operator assigned a qualified person or position that has overall responsibility for the development, implementation, and integration of the risk management program elements [68.15(b)]?          – At the time of the inspection, there was an inconsistency in the listing for responsible person between the risk management plan and Section 2.1 of the Management Plan.</p>	<p>\$ 600.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?          – At the time of the inspection, the machinery room had no identifying signage or alarms (audible/visual) related to the presence of anhydrous ammonia. See IAR 2-2008 (2010 ed.) <i>Equipment, Design, and Installation of Closed Circuit Ammonia Mechanical Refrigerating Systems</i>, Section 13.2.1.2; and ANSI/ASHRAE 15-2010 <i>Safety Standard for Refrigeration Systems</i>, Section 8.11.2.1.</p>	<p>\$ 1,500.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?          – At the time of the inspection, flammable liquids (oil and gasoline) were being stored in the machinery room, creating a fire hazard. See IAR 2-2008 (2010 ed.), <i>Equipment, Design, and Installation of Closed Circuit Ammonia Mechanical Refrigerating Systems</i>, Section 13.1.3.1.</p>	<p>\$ 1,500.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?                      – At the time of the inspection, the king valve was not labeled and did not have a handle on it. See ANSI/ASHRAE 15-2010, <i>Safety Standard for Refrigeration Systems</i>, Section 11.2.2; and IIAR Bulletin 109, <i>Minimum Safety Criteria for a Safe Ammonia Refrigeration System</i> (1997), Section 4.10.3.</p>	<p>\$ 1,500.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has the owner or operator certified annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary [68.69(c)]?                      – At the time of the inspection, this activity had not been performed.</p>	<p>\$ 1,200.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, been initially trained in an overview of the process and in the operating procedures [68.71(a)(1)]?                      – At the time of the inspection, although employees had received general ammonia safety training, initial process-specific training of employees had not been conducted.</p>	<p>\$ 1,500.00</p>
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**Section C – Prevention Program [68.65 - 68.81]**

<p>Has refresher training been provided at least every three years, or 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 [68.71(b)]?                      – At the time of the inspection, refresher training of employees had not been offered.</p>	<p>\$ 1,500.00</p>
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**Total unadjusted penalty: \$9,300**

**2. Size-Threshold Quantity Multiplier**

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

**Expedited Settlement Penalty Matrix: Private Industries**

# of Employees	1 – 5*	>5 – 10*	> 10*
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0 - 9	0.4	0.6	0.8
10 - 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

\* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

Size/Threshold Quantity multiplier from Expedited Settlement Penalty Matrix: 1.0

### **3. Proposed Penalty**

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

Proposed Penalty = \$9,300 (Unadjusted Penalty)  
x 1.0 (Size/Threshold Quantity Multiplier)  
= \$9,300

**In the Matter of Associated Grocers of New England, Inc.**  
**Docket No. CAA-01-2014-0048**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Expedited Settlement Agreement (ESA) was sent to the following persons, in the manner specified, on the date below:

Original and one copy  
hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square (ORA 18-1)  
Boston, MA 02109-3912

Copy of ESA, letter to  
Regional Judicial Officer,  
And Regional Hearing Clerk  
by mail:

Michael C. Bourgoine  
Associated Grocers of New England, Inc.  
11 Cooperative Way  
Pembroke, NH 03275

Dated: 9/17/14



Catherine Smith  
U.S. Environmental Protection Agency, Region 1  
Office of Environmental Stewardship  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912  
Tel: (617) 918-1777  
Fax: (617) 918-0777  
Email: smith.catherine@epa.gov