

**ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

| | | |
|----------------------|---|------------------------------|
| IN THE MATTER OF: |) | Docket No. RCRA-08-2007-0002 |
| |) | |
| United Special, Inc. |) | |
| 900 Schofield Lane |) | |
| Farmington, NM 87401 |) | |
| d/b/a |) | CONSENT AGREEMENT |
| 7-2-11 Store #41 |) | |
| 435 Goddard Ave. |) | |
| Ignacio, CO 81137 |) | |
| |) | |
| _____ Respondent. |) | |

Complainant, the United States Environmental Protection Agency, Region 8 (EPA) and Respondent, United Special, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On June 29, 2007, Complainant issued an Administrative Complaint and Notice of Opportunity for Hearing alleging violations of Section 9006 of the Resource Conservation and Recovery Act (hereinafter, "RCRA"), 42 U.S.C. § 6991e. The Complaint proposed a civil penalty for the violation alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or in this Consent Agreement.
4. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Consent Agreement without further litigation is the most appropriate means of resolving this matter.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all the terms of the settlement agreed to by the parties.

6. Respondent consents and agrees, for the purposes of settlement, to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00) in the manner described in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 12:00 p.m. Central Standard Time to be considered as received that day.
- b. Payment shall be made by one of the following methods:
 - i. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

ii. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

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"

iii. **On Line Payment:**

This option is available through the Department of Treasury.
www.pay.gov
Enter sfo 1.1 in the search field
Open form and complete the required fields.

- c. A copy of the check or record of payment if sent by other means shall be sent simultaneously to:

Lisa Luebke,
UST Coordinator (8P-W-GW)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- d. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest accrues).
- e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the

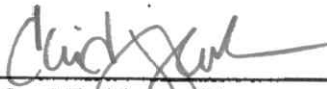
debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e. the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

- f. Respondent agrees that the payment provided for herein shall never be claimed as a federal or other tax deduction or credit.
7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with RCRA and its implementing regulations.
8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
10. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
11. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.


12. Each party shall bear its own costs and attorneys fees in connection with this matter.
13. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

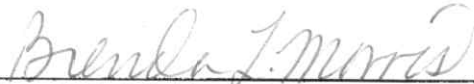
Date: 11/9/2007

By: 
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 11-8-2007

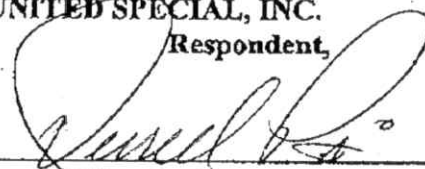
By: 
Sharon L. Kercher, Director
Technical Enforcement Program

Date: 11-13-07

By: 
Brenda L. Morris, Senior Attorney
Legal Enforcement Program

**UNITED SPECIAL, INC.
Respondent,**

Date: 10/23/07

By: 
(Signature)
David Pitts
(Print Name of Signatory)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER GRANTING FACSIMILE FILING OF CONSENT AGREEMENT AND FINAL ORDER** in the matter of **UNITED SPECIAL, INC. d/b/a 7-2-11 STORE #41, DOCKET NO.: RCRA-08-2007-0002**, was filed with the Regional Hearing Clerk on November 15, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail on November 15, 2007, to:

Derrell Pitts, General Manager
7-2-11 Food Stores
900 Schofield
Farmington, NM 87401

And

Honorable Spencer T. Nissen
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20406

November 15, 2007



Tina Artemis
Paralegal/Regional Hearing Clerk