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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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| In the Matter of: | ) | DOCKET NO. CAA-10-2015-0151 |
| UNIFIED GROCERS, INC., | ) | **CONSENT AGREEMENT** |
| Seattle, Washington, | ) | |
| Respondent. | ) | |

## I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"); 42 U.S.C. § 11045; and Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609; Section 325 of EPCRA, 42 U.S.C. § 11045; and 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 Unified Grocers, Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order 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 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 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 CERCLA, EPCRA, and the CAA are 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 Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of CERCLA, EPCRA, and the CAA, together with the specific provisions of CERCLA, EPCRA, 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 California and does business in the State of Washington.

3.2. Respondent owns and/or operates a grocery warehouse and distribution center at 3301 South Norfolk, Seattle, Washington ("Facility").

## CERCLA/EPCRA RELEASE REPORTING VIOLATIONS

3.3. Under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, any person in charge of a facility shall, as soon as he or she has knowledge of any release of a hazardous substance from such facility in quantities equal to or greater than the reportable quantity ("RQ") listed in 40 C.F.R. § 302.4, immediately notify the National Response Center ("NRC") of such release. The implementing regulations for CERCLA Section 103's requirements are found at 40 C.F.R. Part 302.

3.4. Ammonia is a hazardous substance listed in 40 C.F.R. § 302.4 with an RQ of 100 pounds.

3.5. Under Section 304 of EPCRA, 42 U.S.C. § 11004 and 40 C.F.R. Part 355, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately provide notice of the release to the State Emergency Response Commission ("SERC") of any state likely to be affected by the release and the community emergency coordinator for the Local Emergency Planning Committee ("LEPC") of any area likely to be affected by the release.

3.6. Pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), extremely hazardous substances are listed in 40 C.F.R. Part 355, Appendices A and B.

3.7. Ammonia is an extremely hazardous substance listed in 40 C.F.R. Part 355, Appendices A and B.

3.8. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, a corporation.

3.9. Under Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), "facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft.

3.10. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.11. Respondent is a "person" as defined in CERCLA Section 101(21), 42 U.S.C. § 9601(21), and EPCRA Section 329(7), 42 U.S.C. § 11049(7).

3.12. Respondent is the "owner or operator" and is in charge of the Facility.

3.13. The Facility is a "facility" as defined by Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.14. Respondent uses ammonia in its refrigeration system at the Facility.

3.15. Subject to certain exclusions not relevant here, Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines "release" as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.16. Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines "release" as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

3.17. On April 18, 2011, at approximately 9:35 pm Pacific Daylight Time ("PDT"), there was a release of ammonia from the Facility by means of emission into the air in quantities greater than the RQ.

3.18. Respondent had knowledge that more than the RQ of ammonia had been released from the Facility on or around the time the release began, but in any event no later than 9:58 p.m., PDT.

COUNT 1

3.19. Respondent notified the NRC of the release of ammonia from the Facility at approximately 11:08 pm PDT on April 18, 2014, more than one hour after Respondent had knowledge of the release.

3.20. Respondent's failure to immediately notify the NRC of the release of ammonia is a violation of 40 C.F.R. § 302.6 and Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

COUNT 2

3.21. Respondent notified the SERC of the release of ammonia from the Facility at approximately 11:16 pm PDT on April 18, 2014, more than one hour after Respondent had knowledge of the release.

3.22. Respondent's failure to immediately notify the SERC of the release of ammonia is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(2).

CERCLA/EPCRA ENFORCEMENT AUTHORITY

3.23. Under Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19, EPA may asses a civil penalty of not more than $37,500 per day for each day after January 12, 2009 during which a violation continues.

## CAA SECTION 112(r)(7) CHEMICAL ACCIDENT PREVENTION VIOLATIONS

3.24. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), 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.

3.25. 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.

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

3.27. 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.

3.28. The Facility is a "stationary source" as defined in 40 C.F.R. § 68.3.

3.29. 40 C.F.R. § 68.3 defines "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or a combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

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

40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185 that includes a registration that reflects all covered processes, a facility with a Program 3 covered process shall, among other things, develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 through 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

3.31. Respondent has been subject to the Risk Management Program requirements of 40 C.F.R. Part 68 since June 21, 1999.

3.32. Respondent submitted an RMP to EPA on June 21, 1999, June 18, 2004, and June 18, 2009.

COUNT 3

3.33. 40 C.F.R. § 68.65(a) and (d) (iv) require the owner or operator of a stationary source to complete a compilation of written process safety information that includes, among other things, information on the relief system design and basis before conducting the process hazard analysis required by 40 C.F.R. § 68.67.

3.34. Prior to the time of EPA's inspection, Respondent was required to conduct and had conducted a process hazard analysis pursuant to 40 C.F.R. § 68.67.

3.35. At the time of EPA's inspection, Respondent was unable to produce adequate information on the relief system design and basis. Specifically, Respondent's documentation did not include information such as inlet and outlet sizes, pressure settings, flow rates, and other information used to calculate the sizing of the relief valves and vent pipes.

3.36. Respondent's failure to have adequate written information on the relief system design and basis is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(a) and (d)(iv).

COUNT 4

3.37. 40 C.F.R. § 68.73(a) identifies piping systems, including piping components such as valves, as equipment subject to the requirements of 40 C.F.R. § 68.73.

3.38. 40 C.F.R. § 68.73(b) requires the owner or operator of a stationary source to establish and implement written procedures to maintain the ongoing integrity of process equipment identified in 40 C.F.R. § 68.73(a).

3.39. 40 C.F.R. § 68.73(c) requires the owner or operator of a stationary source to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

3.40. In replacing the dual PRVs on compressor RC-4, Respondent failed to fully shut off the ammonia line supplying the PRVs as specified in Respondent's September 19, 2009 procedures entitled "Replacing Safety Relief Valves."

3.41. Respondent failed to train each employee involved in maintaining the on-going integrity of the ammonia refrigeration process in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner. Respondent's records contained conflicting or insufficient information regarding whether two employees had completed training in Respondent's September 19, 2009 procedures entitled "Replacing Safety Relief Valves" at the time the dual

PRVs on compressor RC-4 were replaced in April 2011 and show that one employee who participated in the replacement had not been trained in the procedure.

3.42. 40 C.F.R. § 68.73(a) identifies vent systems and devices and emergency shutdown systems as equipment subject to the requirements of 40 C.F.R. § 68.73.

3.43. 40 C.F.R. § 68.73(e) requires the owner or operator of a stationary source with process equipment identified in 40 C.F.R. § 68.73(a) to correct deficiencies in equipment that are outside acceptable limits (as defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

3.44. Based on Respondent's process safety information, the compressors at the Facility are designed to shut down when ammonia levels are at or above 300 parts per million ("ppm").

3.45. American National Standard ("ANS")/American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) Bulletin 111, *Ammonia Machinery Room Ventilation*, which were in effect at all relevant times, call for a manual restart of compressors after an emergency shutdown.

3.46. The RMP/PSM Mechanical Integrity Audit dated July 19-22, 2010 conducted by Greiner Consulting LLC on Respondent's ventilation system in the engine room did not verify that the ventilation system was equipped with an ammonia detector that shuts down the compressors at 300 ppm and did not identify the safety issue with the RC-2 compressor at the Facility automatically restarting after the ammonia level drops below 300 ppm.

3.47. On July 7, 2011, Respondent provided documentation of a ventilation system test conducted by PermaCold on June 29, 2011, recommending that Respondent correct a problem with an RC-2 compressor that restarted after the ammonia level dropped below 300 ppm.

3.48. Respondent did not correct this deficiency until March 27, 2015.

3.49. Respondent's failure to meet its written procedures for maintaining the ongoing integrity of process equipment; to adequately train its employees for process maintenance activities; and to correct deficiencies in its ventilation system and ammonia detector when the equipment was outside acceptable limits as defined by its process safety information before further use or in a safe and timely manner when necessary means are taken to assure safe operation, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(b), (c), and (e).

COUNT 5

3.50. 40 C.F.R. § 68.81(a) requires the owner or operator of a stationary source to investigate each incident which resulted in, or could reasonably have resulted in, a catastrophic release of a regulated substance.

3.51. "Catastrophic release" is defined in 40 C.F.R. § 68.3 to mean a major uncontrolled, emission, fire or explosion, involving one or more regulated substances, that presents and imminent and substantial endangerment to public health and the environment.

3.52. 40 C.F.R. § 68.81(e) requires the owner or operator of a stationary source to establish a system to promptly address and resolve the incident report findings and that resolutions and corrective actions be documented.

3.53. The April 18, 2011 ammonia release at the Facility resulted in, or could reasonably have resulted in, a catastrophic release of a regulated substance.

3.54. Respondent conducted an investigation of the April 18, 2011 release and prepared an Incident Investigation Form dated April 20, 2011 to document its findings.

3.55. The April 20, 2011 Incident Investigation Form did not document resolutions and corrective actions on the replacement of PRVs in the engine room, and no other documentation of resolutions and correction actions was provided by Respondent to EPA in April 2012 in response to a specific request from EPA.

3.56. Respondent's failure to establish a system to address and resolve the April 18, 2011 incident investigation report findings and recommendations, and document resolutions and corrective actions, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81(e).

CAA ENFORCEMENT AUTHORITY

3.57. 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 up to $37,500 per day of violation after January 12, 2009.

**EPCRA SECTION 312**
**CHEMICAL INVENTORY REPORTING REQUIREMENTS**

3.58. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility which is required by the Occupational Safety and Health Administration ("OSHA") to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical, to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the LEPC, the SERC, and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals

required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds or, in the case of an Extremely Hazardous Substance, in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower. Effective May 25, 2012, OSHA changed the term "material safety data sheet" to "safety data sheet." 77 Fed. Reg. 17574 (March 26, 2012). For purposes of this Consent Agreement, the term "material safety data sheet" shall mean "safety data sheet" and vice versa.

3.59. The OSHA Hazard Communication Standard ("OSHA Standard"), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.60. Ammonia is defined as a hazardous chemical under the OSHA Standard.

3.61. The OSHA Standard requires an MSDS to be prepared, or available, for ammonia.

3.62. Ammonia is listed in Appendices A and B of 40 C.F.R. Part 355 and is therefore an Extremely Hazardous Substance under 40 C.F.R. § 370.66.

3.63. Ammonia has a Threshold Planning Quantity of 500 pounds as specified in 40 C.F.R. Part 355, Appendices A and B.

3.64. During calendar year 2013, Respondent stored greater than 500 pounds of ammonia at the Facility.

COUNT 6

3.65. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC for calendar year 2013 by March 1, 2014.

COUNT 7

3.66. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the LEPC for calendar year 2013 by March 1, 2014.

COUNT 8

3.67. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the fire department with jurisdiction over the Facility for calendar year 2013 by March 1, 2014.

EPCRA ENFORCEMENT AUTHORITY

3.68. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $37,500 for each such violation after January 12, 2009, and each day a violation continues constitutes a separate violation.

## IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

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

4.3. After considering the penalty assessment factors in the applicable statutes, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $110,200 ("Assessed Penalty"), $6,061 of which reflects violations of CERCLA, $34,713 of which reflects violations of EPCRA, and $69,426 of which reflects violations of the CAA.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order 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 the title and docket number of this action. Respondent must also include a note with the payment indicating $6,061 is for the CERCLA penalty and $104,139 is for the EPCRA and CAA penalty.

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:

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|---|---|
| Regional Hearing Clerk<br>U.S. Environmental Protection Agency<br>Region 10, Mail Stop ORC-113<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>Smith.candace@epa.gov | Javier Morales<br>U.S. Environmental Protection Agency<br>Region 10, Mail Stop OCE-101<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>morales.javier@epa.gov |

4.7. If Respondent fails to pay any portion of the Assessed Penalty for the EPCRA or CERCLA violations in full by its due date:

a. 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 under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1) or Section 109 of CERCLA, 42 U.S.C. § 9609, to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

b. Respondent shall also be responsible for payment of the following amounts:

i. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty for the EPCRA or CERCLA violations shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of such Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

ii. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of $15 shall be paid if any portion of the Assessed Penalty for the EPCRA or CERCLA violations is more than 30 days past due.

iii. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty for the EPCRA or CERCLA violations that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.8. If Respondent fails to pay any portion of the Assessed Penalty for the CAA violations in full by its due date:

a. The entire unpaid balance of CAA 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 for the CAA violations under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

b. Respondent shall be responsible for payment of the following amounts:

i. Interest. Any unpaid portion of the Assessed Penalty for the CAA violations 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 for the CAA violations that is paid within 30 days of the effective date of the Final Order contained herein.

ii. Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty for the CAA violations and interest on a timely basis, Respondent

shall also be required to pay the United States' enforcement expenses, including but not limited to attorney's 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. Respondent agrees to implement and complete a Supplemental Environmental Project ("SEP") consisting of enhancements to Respondent's ammonia monitoring system and operation thereof in accordance with all provisions described in this Consent Agreement and Attachment A.

4.10. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a *Force Majeure* event. A *Force Majeure* event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A *Force Majeure* event does not include, *inter alia*, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.11. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that

Respondent in good faith estimates that the cost to implement the SEP, exclusive of internal labor costs, is $182,603.

4.12. Respondent also certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform or develop the SEP by another agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies: that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement; and that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.13. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 4.9.

4.14. Respondent shall submit a SEP Completion Report to EPA within 30 days following the completion of the SEP. The SEP Completion Report shall contain the following information:

(1) A description of the SEP as implemented;
(2) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement;
(3) A description of any problems encountered and the solutions thereto;
(4) A description of the training Respondent conducted regarding the enhanced ammonia monitoring system, including who attended the training;

(5) A description of the operation of the enhanced ammonia monitoring system and an explanation of how the system has improved Respondent's ability to prevent and respond to any actual or potential releases of ammonia from the refrigeration system.

Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports related to the SEP as required by this Consent Agreement and Attachment A by first class mail, overnight mail, or hand delivery to:

Javier Morales
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
morales.javier@epa.gov

4.15. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.16. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement until the SEP Completion Report is accepted pursuant to Paragraph 4.17, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Consent Agreement, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the

information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

4.17. Following receipt of the SEP Completion Report described in Paragraph 4.14, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.19.

4.18. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement and this failure was not caused solely by events which constitute a *Force Majeure* as defined by Paragraph 4.10, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraph 4.19. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP, and whether a *Force Majeure* event has occurred that impacts timely completion of the SEP, is reserved to the sole discretion of EPA.

4.19. If Respondent fails to satisfactorily or timely complete the enhancements to the ammonia monitoring system detailed in Attachment A, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amount:

| Period of Noncompliance | Penalty |
|---|---|
| Greater than or equal to 1 day but less than 30 days | $1,000 |
| Greater than or equal to 30 days but less than 60 days | $5,000 |
| Greater than or equal to 60 days but less than 90 days | $15,000 |

| Greater than or equal to 90 days but less than 120 days | $30,000 |
|---|---|
| Greater than or equal to 120 days but less than 180 days | $100,000 |
| Greater than 180 days | $185,000 |

If Respondent fails to timely conduct training on the enhancements to the ammonia monitoring system detailed in Attachment A, Respondent shall pay a stipulated penalty of $250 per day the training is not conducted. If Respondent fails to operate the ammonia monitoring system after installing the enhancements detailed in Attachment A, Respondent shall pay a stipulated penalty of $500 per day the ammonia system is not operated. If Respondent fails to timely submit to EPA the SEP Completion Report required by Paragraph 4.14 of this Consent Agreement, Respondent shall pay a stipulated penalty of $250 per day the SEP Completion Report is delinquent. Respondent shall pay stipulated penalties upon written demand from EPA within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 through 4.8. Interest and late charges shall be paid as stated in Paragraphs 4.7 and 4.8.

4.20. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.

4.21. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

> "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, and the Clean Air Act."

4.22. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Consent Agreement.

4.23. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.7, 4.8 and 4.19 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.25. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.26. Except as described in Paragraph 4.7 or 4.8, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.27. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.28. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED: 9/17/15

FOR RESPONDENT:

Terry Bodwin, VP, Chief HR Officer
UNIFIED GROCERS, INC.

DATED: 9/17/2015

FOR COMPLAINANT:

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

ATTACHMENT A: SUPPLEMENTAL ENVIRONMENTAL PROJECT

In the matter of Unified Grocers, Inc.
Seattle, Washington
Consent Agreement, EPA Docket No. CAA 10-2015-0151

A. In accordance with Paragraph 4.9 of the above-captioned Consent Agreement, Unified Grocers, Inc. ("Respondent") shall implement a supplemental environmental project ("SEP") consisting of the following enhancements to the ammonia monitoring system at its grocery warehouse and distribution center located at 3301 South Norfolk, Seattle, Washington ("Facility"):

   1. Installing three new ammonia sensors in the engine control room to improve detection of ammonia releases, each with three different set points: notification of plant maintenance personnel at or above 25 ppm, activation of emergency ventilation at or above 150 ppm, and shut down of the entire ammonia refrigeration system at or above 250 ppm.
   2. Installing 43 new ammonia sensors near evaporators throughout the Facility to improve detection of ammonia releases.
   3. Installing 32 horn/strobe warning devices inside and outside of each ammonia-occupied space in the Facility to alert personnel that ammonia levels have exceeded safe limits within the room.
   4. Installing an ammonia detector on the main pressure relief valve to provide real time continuous detection of releases to the atmosphere.
   5. Installing a remote monitoring and alarm notification system that makes voice mail phone calls to up to four people to notify that an alarm has been detected and continues calling until someone responds to the call. The system must also allow users to call in from remote locations to check on the status of all monitored conditions.

B. All components of the above-described SEP must be installed within six months of the effective date of this Consent Agreement and Final Order.

C. Respondent must notify EPA in writing of the date the SEP is fully implemented and operational within 30 days of completion. The written notification shall be made as provided in Paragraph 4.14 of the Consent Agreement.

D. In addition to completing the installation of the above-described SEP, Respondent shall:

   1. Conduct training on the enhancements to the ammonia monitoring system described above within 90 days following installation of the enhancements; and
   2. Operate the equipment for at least one year following installation.

E. The SEP shall not be deemed complete until Respondent has operated the enhancements to the ammonia monitoring system for one year following installation.

BEFORE THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|---|---|---|
| In the Matter of: | ) | DOCKET NO. CAA-10-2015-0151 |
| UNIFIED GROCERS, INC., | ) | **FINAL ORDER** |
| Seattle, Washington, | ) | |
| Respondent. | ) | |

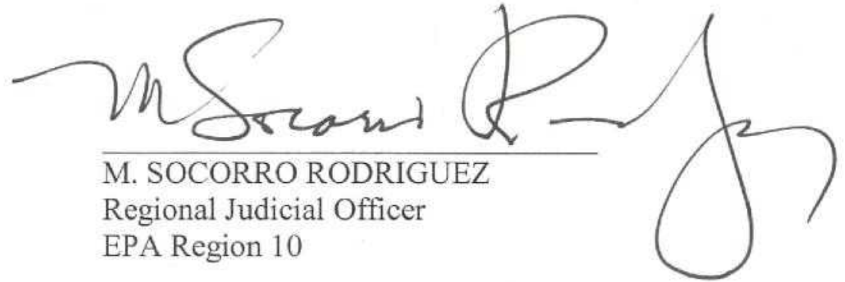
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. This Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under CERCLA, EPCRA, and the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of CERCLA, EPCRA, and the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 23rd day of September, 2015.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10



**U.S. Environmental Protection Agency**
**1200 Sixth Avenue, Suite 900, ORC-113**
**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: Unified Grocers, Inc., Docket No.: CAA-10-2015-0151**, 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 A. Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
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:

Stephen J. O'Neil
Sheppard, Mullin, Richter & Hampton, LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071

DATED this 24 day of September, 2015.

TERESA LUNA
Regional Hearing Clerk
EPA Region 10