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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

In the Matter of	§	
	§	
United Natural Foods, Inc.	§	Docket No. CAA-06-2025-3465
Lancaster, Texas	§	
	§	
Respondent	§	

CONSENT AGREEMENT AND FINAL ORDER

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the “CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (“EPA”). On EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6, has been delegated the authority to settle civil administrative penalty and compliance proceedings under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. United Natural Foods, Inc. (“UNFI” or “Respondent”) is a corporation doing business in the State of Texas. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as the "CAFO" without the adjudication of any issues of law or fact herein.

5. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

B. JURISDICTION

6. This CAFO is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113 (a)(3)(A) of the Act, 42 U.S.C. § 7413 (a)(3)(A).

7. EPA and the United States Department of Justice jointly determined that this matter, although it involves a penalty assessment above \$472,901 and alleged violations that occurred more than 12 months before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. On December 31, 2024, EPA issued to Respondent a Notice letter, providing notice to Respondent that EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with EPA. On March 26, 2025, representatives of Respondent and EPA conferred regarding the December 31, 2024, Notice letter.

9. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

10. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. STATUTORY AND REGULATORY BACKGROUND

Clean Air Act, Section 112(R)

11. The objective of Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

12. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate, not later than 24 months after November 15, 1990, a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

13. Pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

14. Pursuant to Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), whenever the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, the Administrator may issue an administrative order and a civil administrative penalty.

15. The Administrator may assess a civil penalty of up to \$59,114 per day of violation up to a total of \$472,901 for each violation. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

17. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to EPA.

18. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

19. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 apply to each program level of covered processes.

20. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

Definitions

21. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

22. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

23. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

24. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

25. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

26. The regulation at 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 combination of these activities. For the 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.

27. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

28. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

29. Respondent is the operator of a facility located at 2100 Daniieldale Road, Lancaster, TX 75134 (the “Facility”).

30. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, EPA conducted an inspection of the Facility from December 11 to 14, 2023, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Inspection”).

31. On December 31, 2024, EPA sent Respondent a Notice letter. On March 26, 2025, and on various other occasions, EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials. EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

32. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

33. Respondent has an anhydrous ammonia refrigeration system at the Facility, meeting the definition of "process", as defined by 40 C.F.R. § 68.3.

34. Anhydrous ammonia is a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130 is 10,000 pounds.

35. Respondent has greater than a threshold quantity of anhydrous ammonia, in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

36. From the time Respondent first had on-site greater than a threshold quantity of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

37. From the time Respondent first had on-site greater than a threshold quantity of anhydrous ammonia in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and was in North American Industry Classification System code 424410 (General Line Grocery Merchant Wholesaler) and subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

38. Based upon the information gathered during the Inspection, EPA determined that Respondent violated certain provisions of the CAA.

E. ALLEGED VIOLATIONS

39. The facts stated in EPA Findings of Fact and Conclusions of Law above are herein incorporated.

40. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as stated below.

Count 1 – Process Hazard Analysis

41. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(c)(3) & (4) and (e), the process hazard analysis shall address: (3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases and standby or emergency power systems. (Acceptable detection methods might include process monitoring and control

instrumentation with alarms, and detection hardware such as hydrocarbon sensors.) The owner or operator shall ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation; (4) Consequences of failure of engineering and administrative controls. (e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate 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.

42. UNFI failed to evaluate the consequences of failure of engineering and administrative controls for the 2020 PHA and did not complete this evaluation for the 2023 PHA. One finding from the 2020 PHA had a due date of July 31, 2023. UNFI did provide documentation of the action taken. However, this 2020 PHA finding was not included as a repeat finding in the 2023 PHA which occurred before the due date. UNFI failed to address one finding from the 2023 PHA, with a due date of December 13, 2023. Additionally, UNFI failed to provide documentation to confirm that there was communication to affected employees of the 2020 and 2023 PHA findings or corrective actions completed.

43. UNFI's failure to properly perform its process hazard analysis pursuant to 40 C.F.R. § 68.67(c)(3) & (4) and (e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2 – Operating Procedures

44. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(a) & (c), the owner or operator shall 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 at least the following elements. (1) Steps for each operating phase: (i) Initial startup; (ii) Normal operations; (iii) Temporary operations; (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. (v) Emergency operations; (vi) Normal shutdown; and, (vii) Startup following a turnaround, or after an emergency shutdown. (c) The operating procedures shall be reviewed 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. The owner or operator shall certify annually that these operating procedures are current and accurate.

45. UNFI failed to assure that operating procedures provided clear instructions and reflected actual site-specific operations. UNFI failed to certify operating procedures for 2021 and failed to certify operating procedures for 2023 until April 16, 2024.

46. UNFI's failure provide clear instructions for safely conducting activities and failure to annually certify operating procedures pursuant to 40 C.F.R. § 68.69(a) & (c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3 – Mechanical Integrity

47. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.73(d)(3) & (e), the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. (e) Equipment deficiencies. The owner or operator shall 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.

48. UNFI failed to complete the relief valve replacements in 2022, which were past due. The IIAR standard requires replacement of relief valves every five years. UNFI's Relief Valve Replacement Schedule required the relief valves, installed in 2017, to be replaced in 2022. .

49. UNFI's failure to correct deficiencies in equipment that were outside acceptable limits pursuant to 40 C.F.R. § 68.73(d)(3) & (e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4 – Management of Change

50. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.75(c), employees involved in operating a process and maintenance and contract employees whose job tasks will

be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

51. UNFI failed to document PSSR/MOC training for the refrigeration system expansion that was associated with the MOC, which should have taken place before operation began in October 2022. Although Innovative Refrigeration conducted a PSSR review with the UNFI maintenance manager, other UNFI employees who were assigned to conduct visual inspections were not included in the training. Additionally, Innovative Refrigeration did not provide records of the PSSR/MOC training provided to its own contractor employees who were assigned to operate and maintain the system.

52. UNFI's failure to inform and train employees affected by a change in the process before start-up of the process pursuant to 40 C.F.R. § 68.75(c), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5 – Pre-Startup Safety Review

53. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.77(b), the pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process: (1) Construction and equipment is in accordance with design specifications; (2) Safety, operating, maintenance, and emergency procedures are in place and are adequate; (3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the

requirements contained in management of change, §68.75. (4) Training of each employee involved in operating a process has been completed.

54. UNFI failed to perform a pre-startup safety review prior to the date which ammonia was introduced and became a covered process. UNFI also failed to document that PSSR training was completed for affected employees prior to operation of the expansion. A 2023 compliance audit finding recommended conducting this training to address the deficiency.

55. UNFI's failure to meet the requirements of the pre-startup safety review pursuant to 40 C.F.R. § 68.77(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6 – Compliance Audit

56. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

57. UNFI failed to document the November 2022 audit finding recommendations to address deficiencies had been corrected by the respective due dates noted in the ePSM tracking system. Two (2) actions were still incomplete and past the due dates at the time of EPA's Inspection. Twenty (20) other corrective actions were not completed by the assigned due dates. For one audit finding, UNFI failed to document the PSM committee members' attendance at a MOC & PSSR workshop, and the workshop was supposedly held two months past the scheduled due date. UNFI failed to address the compliance audit finding that evaluation of engineering &

administrative control failures was not included as part of the 2020 and 2023 PHAs. This is confirmed by the lack of evaluation and findings for hazards addressed by engineering and administrative controls listed in the PHAs. UNFI failed to effectively address potential failures by claiming that “in instances where these controls were assumed as failing, they were documented in the scenario description.”

58. UNFI’s failure to promptly determine and document an appropriate response to compliance audit findings, and document that deficiencies had been corrected, pursuant to 40 C.F.R. § 68.79(d), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7 – Incident Investigation

59. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.81(a) & (e), the owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release. (e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

60. UNFI failed to consistently follow its written incident investigation procedure in place at the time of the Inspection by not performing incident investigations for ammonia leaks that were not clearly documented to have been found during normal maintenance procedures or inspections. The incident investigation procedure stated that UNFI would investigate near miss and other release events, except for releases found during normal maintenance

procedures and inspections. UNFI also failed to document quarterly incident investigation follow up review by the PSM committee, as was required by UNFI's incident investigation procedure.

61. UNFI's failure to investigate each incident which could reasonably have resulted in a catastrophic release pursuant to 40 C.F.R. § 68.81(a) & (e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8 – Employee Participation

62. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.83(b), the owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

63. UNFI failed to implement its written employee participation program and policy consistently. PSM committee quarterly meetings specified by the program did not begin until June 2023, according to the meeting records provided to EPA. UNFI also failed to document PSM committee reviews it conducted (or was supposed to conduct) in accordance with its written program.

64. UNFI's failure to consult with employees on the conduct and development of process hazard analyses and other elements of process safety management pursuant to 40 C.F.R. § 68.83(b), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 9 – Contractors

65. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.87(b)(4), the owner or operator shall develop and implement safe work practices consistent with § 68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

66. UNFI failed to provide documentation that the safe work practices policy had been developed or implemented. UNFI's contractor safety document cited 40 C.F.R. § 68.87(b)(4), but it failed to specify how contractor access was controlled. The 2022 compliance audit included a finding recommending that a contractor access policy should be developed, and the resolution to this finding was noted as completed March 2023.

67. UNFI's failure to develop and implement safe work practices consistent with 40 C.F.R. § 68.69(d) pursuant to 40 C.F.R. § 68.87(b)(4), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 10 – Emergency Response Coordination Activities

68. Pursuant to 40 C.F.R. § 68.93(a), (b), & (c), coordination shall occur at least annually, and more frequently if necessary, to address changes: At the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan. (b) Coordination shall include providing to the local emergency planning and response organizations: The stationary source's emergency response plan if one exists; emergency action plan; updated emergency contact information; and other

information necessary for developing and implementing the local emergency response plan. For responding stationary sources, coordination shall also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). The owner or operator shall request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials. (c) The owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

69. UNFI failed to complete coordination with the local fire department until 2023. Emergency response coordination with the local emergency planning and response organizations under § 68.93(a) and (b) is required to be completed at least annually and should have been completed by August 16, 2022, after submission of the initial RMP registration on August 16, 2021.

70. UNFI's failure to complete coordination with the local fire department pursuant to 40 C.F.R. § 68.93(a), (b), & (c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 11 – Registration

71. Pursuant to 40 C.F.R. § 68.160(b)(6), the registration shall include the following data: (6) The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact.

72. UNFI failed to include an accurate emergency contact phone number in its RMP registration. When contacted during the Inspection, the call went straight to a voicemail box that had not been set up, and UNFI personnel confirmed that the phone number was not correct.

73. UNFI's failure to include an accurate emergency contact phone number in its RMP registration pursuant to 40 C.F.R. § 68.160(b)(6) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 12 – Required Corrections

74. Pursuant to 40 C.F.R. § 68.195(b), beginning June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information.

75. UNFI failed to recognize that the emergency contact phone number in the registration was not operational when the March 4, 2022, registration update was submitted and failed to correct it within one month.

76. UNFI's failure to correct the emergency contact information pursuant to 40 C.F.R. § 68.195(b) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

F. CONSENT AGREEMENT AND CIVIL PENALTY

General

77. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;

c. consents to the assessment of a civil penalty, as stated herein;

d. consents to the issuance of any specified compliance or corrective action order;

- e. consents to any conditions specified herein;
- f. consents to any Permit Action stated herein;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this CAFO.

78. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Northern District of Texas;
- e. waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel

compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;

f. consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty specified herein; and

g. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

79. By signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying this CAFO.

80. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

81. In accordance with 40 C.F.R Part 22, nothing in this CAFO, including the execution and implementation of this CAFO, shall constitute or be construed as an admission by Respondent of any violation of the CAA, or of any implementing regulation, or of any the allegations stated herein.

Penalty Assessment and Collection

82. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of any penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violations, and other factors as justice may require, EPA has assessed a civil penalty in the amount of \$541,878.67 (the "EPA Penalty"). The EPA Penalty has been determined in accordance with Section 113 of the CAA, 42, U.S.C. § 7413, and at no time exceeded EPA's statutory authority.

83. Respondent agrees to pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO. Respondent shall pay the EPA Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 *Executive Order on Modernizing Payments To and From America's Bank Account*, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.

84. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Order, Docket No. CAA-06-2025-3465. The payment shall also be accompanied by

United Natural Foods, Inc.
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a transmittal letter that shall reference Respondent's name and address, the case name, and docket number CAA-06-2025-3465. Respondent's adherence to this request will ensure proper credit is given when penalties are received for Region 6.

b. Concurrently with any payment, email proof of such payment and the transmittal letter to the following email addresses:

Michael "Patrick" Spillman
U.S. EPA Region 6
Spillman.michael@epa.gov

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due.

85. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the EPA Penalty per this CAFO, the entire unpaid balance of the EPA Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the EPA Penalty is paid in full within 30 days, interest accrued is waived. If the EPA Penalty is not

paid in full within 30 days, interest will continue to accrue until any unpaid portion of the EPA Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.

c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

86. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the EPA Penalty per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

a. refer the debt to a credit reporting agency, a collection agency, or request that the Attorney General bring civil action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the EPA Penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13 and 13.14;

b. collect the above-referenced debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not

limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

c. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Additional Terms of Settlement

87. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

88. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

89. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information. *See* 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information).

90. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

91. By signing this CAFO, Respondent certifies that, as of the date of execution of this CAFO, Respondent has addressed or is addressing the violations alleged herein, and, to the best of its knowledge, is presently in compliance with all other requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

92. By signing this CAFO, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party it represents to this CAFO.

93. Respondent and EPA agree to the use of electronic signatures for this matter. EPA and Respondent consent to service of a final order by email at the following valid email addresses: George.elizabeth.a@epa.gov (for EPA) and Legal.notices@unfi.com (for Respondent).

94. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 85.b of this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

95. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to annually the Internal Revenue Service ("IRS"), a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a

law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Division at chalifoux.jessica@epa.gov on or before the date that the EPA Penalty is due pursuant to Paragraph 82 or within 7 days of the Effective Date if the Effective Date is between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence.
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Division with Respondent’s TIN, via email, within 5 days of Respondent’s receipt of a TIN issued by the IRS.

G. EFFECT OF CONSENT AGREEMENT AND RESERVATION OF RIGHTS

96. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in Sections D and E above.

97. The terms, conditions and requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

98. Penalties paid pursuant to this CAFO shall not be deductible for purposes of Federal, State, and local taxes.

99. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b) and adjusted for inflation pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

100. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. EPA does not, by its consent to the entry of this CAFO, warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance

with provisions of the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

101. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

102. If and to the extent EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

H. EFFECTIVE DATE

103. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

United Natural Foods, Inc.
Docket No. CAA-06-2025-3465

The foregoing Consent Agreement In the Matter of United Natural Foods, Inc., Docket No. CAA-06-2025-3465, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

UNITED NATURAL FOODS, INC.

Date: 10/08/25

Mahrugh Hussain
Signature

Mahrugh Hussain
Print Name

General Counsel
Title

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Margaret Osbourne
Digitally signed by
MARGARET OSBOURNE
Date: 2025.10.09
12:04:29 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

United Natural Foods, Inc. is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Dated _____

**THOMAS
RUCKI**

Thomas Rucki
Regional Judicial Officer

Digitally signed by
THOMAS RUCKI
Date: 2025.10.10 08:32:24
-04'00'

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to EPA:

George.elizabeth.a@epa.gov
Spillman.michael@epa.gov

Copy via Email to Respondent:

Legal.notices@unfi.com
UNFI Legal Department
15 Park Row W
Ste. 302
Providence, RI 02903-1184


Regional Hearing Clerk
U.S. EPA, Region 6