

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

FILED

Apr 11, 2024

1:36 pm

U.S. EPA REGION 4  
HEARING CLERK

In the Matter of:

**The Kroger Co. d/b/a Heritage Farms  
Dairy,**

Respondent.

Docket No. CAA-04-2023-0204(b)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without Respondent’s admission of violation or any adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.
5. Respondent is **The Kroger Co. d/b/a Heritage Farms Dairy**, a corporation doing business in the State of Tennessee. This proceeding pertains to Respondent’s facility located at 1100 New Salem Highway, Murfreesboro, Tennessee 37129 (Facility).

### III. GOVERNING LAW

6. Any person who violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.
7. Section 112(r) of the Act 42 U.S.C. § 7412(r), addresses the prevention of release of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.
8. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
9. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.
10. The EPA and the United States Department of Justice jointly determined 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. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

### IV. FINDINGS OF FACTS

11. Respondent is the owner and/or operator of the Facility, which is a “stationary source” as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C).
12. Respondent has registered an RMPlan with the EPA for its Facility and has developed an RMProgram accidental release prevention program for the Facility.
13. On May 25, 2022, the EPA issued to Respondent a Notice of Potential Violation and Opportunity to Confer (“NOPVOC”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section V of this Agreement and providing Respondent an opportunity to confer with the EPA. On June 22, 2022, and August 16, 2022, representatives of Respondent and the EPA held meetings to discuss the NOPVOC.



14. At its Facility:

- a. Respondent operates an ammonia refrigeration plant.
- b. Respondent has on-site for use, 25,300 pounds of anhydrous ammonia.
- c. Respondent has one RMProgram level 3 covered process, which stores or otherwise uses anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

15. On December 16, 2021, the EPA conducted an on-site inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements including the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its Facility.

16. At the time of the inspection, EPA observed the following:

- a. Corrosion and degradation on the surface of the float level vessel in the ammonia machine room (AMR) and no documentation stating that the remaining wall thickness has been measured. Table 10.1 of the American National Standards Institute/International Institute of Ammonia Refrigeration (ANSI/IIAR) 6 states that vessels are to be visually inspected annually for indications of degradation of the protective coating (i.e., paint). Section 10.1.1.1 states, *"Where pitting, surface damage, general corrosion, or a combination thereof, is suspected to have materially reduced the vessel wall thickness, the remaining wall thickness shall be measured using appropriate techniques."* Furthermore, section 10.1.1.1.2.1 states, *"Where the pressure vessel is determined to be suitable for continued operation, the pressure vessel metal surface shall be cleaned and recoated to arrest further deterioration."*

Maintenance equipment and combustible materials (e.g., ladders, equipment carts, cardboard boxes) were stored in the AMR in such a way that partially obstructed access to an exit door and the ammonia refrigeration equipment. Section 6.3.1 of ANSI/IIAR 2 (2014) states, *"Equipment installed in machinery rooms shall be located in such a manner as to allow egress from any part of the room in the event of an emergency, as required by Section 5.17.7, and to provide clearances required for maintenance, operation, and inspection according to manufacturer's instructions."*

The doors in the AMR were not tight fitting and many were not self-closing. None of the doors had panic hardware, and most did not open in the direction of egress for occupants leaving the machine room. Section 6.10.2 of ANSI/IIAR 2-2014 states, *"Machinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall be equipped with panic hardware and shall be side hinged to swing in the direction of egress for occupants leaving the machinery room."*

National Fire Protection Association (NFPA) diamonds were missing on or next to all the doors leading into the AMR. Section 6.15.1. of ANSI/IIAR 2-2014 states, *"A NFPA 704 placard shall be provided in accordance with Section 5.14.2 on or next to all doors through which a person can enter the machinery room."*

Each door into the AMR was not marked with a sign to restrict access to the room. Section 6.15.3 of ANSI/IIAR 2-2014 states, *"Each machinery room entrance door*

*shall be marked with a permanent sign to indicate that only authorized personnel are permitted to enter the room.”*

- b. Facility representatives stated that the Respondent has been coordinating with the fire department since 2022 but did not coordinate annually with local emergency planning and response organizations prior to 2021, except for 2019.
- c. Facility representatives stated that the Respondent coordinated with the local authorities in 2019, but the Respondent had no documentation of coordination with local authorities for 2019.

## V. ALLEGED VIOLATIONS

17. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
18. Based on EPA’s compliance monitoring investigation, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act’s Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:
- a. Failed to document that equipment complies with RAGAGEP, as required by 40 C.F.R. § 68.65(d)(2);
  - b. Failed to coordinate annually with local emergency planning and response organizations 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, as required by 40 C.F.R. § 68.93(a); and
  - c. Failed to document coordination with local authorities including: The names of individuals involved and their contact information; dates of coordination activities; and nature of coordination activities, as required by 40 C.F.R. § 68.93(c).

## VI. STIPULATIONS

19. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
20. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO.
21. 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 actions;
- c. waives any rights 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 the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. §7412(r), and 40 C.F.R. Part 68 at its Facility, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of this CAFO.

22. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

23. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$7,309** which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

24. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g. (FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
REX (Remittance Express): 1-866-234-5681

25. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
r4\_regional\_hearing\_clerk@epa.gov

and

Jordan Noles  
Air Enforcement Branch  
Enforcement and Compliance Assurance Division  
noles.jordan@epa.gov

26. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, 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, and identified with the Facility name and Docket No. **CAA-04-2023-0204(b)**.

27. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover in addition to the amount of the unpaid penalty assessed, the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at rates established pursuant to 26 U.S.C. § 6621(a)(2).



- b. Non-Payment Penalty. A 10 percent quarterly nonpayment penalty pursuant to 42 U.S.C. § 7413(d)(5).
- c. Attorneys' Fees and Costs of Collection. The United States enforcement expenses, including, but not limited to, attorneys' fees and cost of collection.

28. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the 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;
- 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; and/or
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

29. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

#### VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

30. In response to the alleged violations of CAA Section 112(r) and in settlement of this matter, although not required by CAA Section 112(r) or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP).

31. Respondent shall complete an Emergency Planning and Preparedness SEP consisting of the purchase and donation of emergency response equipment to the Murfreesboro Fire Rescue Department. The SEP is more specifically described in Appendix A and incorporated herein by reference.

32. Respondent shall spend no less than \$32,015 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Appendix A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will purchase the additional equipment and donate it to the Murfreesboro, Tennessee, Fire Rescue Department.

33. Respondent shall complete the SEP by the deadline(s) in Appendix A.

34. Identification of SEP Recipient:

- a. Respondent has selected Murfreesboro Fire Rescue Department to receive SEP donations of emergency response equipment.
  - b. The EPA had no role in the selection of the SEP Recipient or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of the SEP Recipient or specific equipment identified in this CAFO.
35. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the CAA Section 112(r), Prevention of Accidental Releases, and the implementing regulations contained in 40 C.F.R. Part 68 Chemical Accident Prevention Provisions, by helping to reduce risks to the public associated with potential chemical accidents by better equipping the Murfreesboro, Tennessee, Fire Rescue Department to respond to such accidents. The SEP is not inconsistent with any provision of either CAA Section 112(r) or 40 C.F.R. Part 68. The SEP relates to the alleged violations and is designed to reduce the adverse impact to the public health and environment to which the alleged violations contribute, specifically by reducing risks from potential chemical accidents by better equipping the SEP Recipient to respond to any chemical accident.
36. Respondent certifies the truth and accuracy of each of the following:
  - a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate, as of the time it was provided, and that the Respondent in good faith estimates that the cost to implement the SEP is at least \$32,015;
  - b. That Respondent will not include administrative costs, or costs of employee oversight of the implementation of the SEP, in calculating the amount it spent to implement the SEP;
  - c. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
  - d. 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 CAFO;
  - e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
  - f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - g. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
  - h. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
  - i. That Respondent has inquired of the SEP Recipient whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Recipient that it is not a party to such a transaction.



37. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

38. SEP Completion Report.

- a. Respondent shall submit a SEP Completion Report to EPA no later than 30 days after donation of equipment to the SEP Recipient. The SEP Completion Report shall contain the following information, with supporting documentation:
  - i. A detailed description of the SEP as implemented, including dates;
  - ii. A description of any operating problems encountered in implementing the SEP and the solutions thereto;
  - iii. Itemized costs;
  - iv. Certification, as set forth in the next paragraph, that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
  - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit a SEP Completion Report that meets the requirements of this paragraph, shall be a violation of this CAFO and Respondent shall become liable for stipulated penalties as set forth herein.
- c. Respondent shall submit all notices and reports required by this CAFO to Jordan Noles at noles.jordan@epa.gov.
- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

39. Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify that I have examined and am familiar with the information in the SEP Completion Report, including all attachments. Based on my direct knowledge or personal inquiry of those individuals with direct knowledge or primary responsibility for implementing the SEP, I certify that the SEP has been fully implemented pursuant to the provisions of this CAFO and that the information in the SEP Completion Report, including all attachments, to the best of my knowledge and belief, is true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information including the possibility of fines or imprisonment.

40. After receipt of the SEP Completion Report, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies, (b) indicate that EPA concludes that the project has been completed satisfactorily, or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties as set forth herein.

#### 41. Stipulated Penalties

- a. Except as provided in subparagraphs (b) and (c) below, for each day the Respondent fails to meet a SEP requirement by the deadline(s) in Appendix A, the following stipulated penalties shall apply:
  - i. \$500 per day for days 1-15;
  - ii. \$1,000 per day for days 16 – 30; and
  - iii. \$2,500 per day for 31st day and beyond.
- b. If Respondent fails to submit a SEP Completion Report meeting the requirements of Paragraph 38, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until a SEP Completion Report meeting the requirements of Paragraph 38, is submitted.
- c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP, as set forth herein, Respondent shall pay a stipulated penalty to the United States in the amount of \$41,700. “Satisfactory completion” of the SEP is defined as Respondent spending no less than \$32,015 and donating equipment described in Appendix A to SEP Recipient. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- d. Stipulated penalties in subparagraphs (a) and (b) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

42. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 24 herein. The Respondent shall send proof of payment in accordance with Paragraphs 25 and 26 herein.

43. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

### **IX. EFFECT OF CAFO**

44. In accordance with 40 C.F.R. § 22.18(c), Respondent’s full compliance with this CAFO shall only resolve Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.

45. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case 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. 40 C.F.R. § 22.18(c).

46. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), 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.

47. 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 determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
48. 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 as provided under the Act.
49. The terms, conditions, and compliance 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, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in Appendix A. The Director of Enforcement and Compliance Assurance Division shall have the authority to extend the deadlines in Appendix A for good cause.
50. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
51. 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.
52. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
53. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
54. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
55. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such 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.
56. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that 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. If such false or

inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

57. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
58. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **X. EFFECTIVE DATE**

59. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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**Complainant and Respondent will Each Sign on Separate Pages**



The foregoing Consent Agreement in the Matter of **The Kroger Co. d/b/a Heritage Farms Dairy**, Docket No. CAA-04-2023-0204(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature: Martha Cutright Sarra Date: 3/14/2024  
Printed Name: MARTHA CUTRIGHT SARRA  
Title: Corporate Vice President and Chief Ethics & Compliance Officer  
Address: The Kroger Co.  
1014 Vine Street  
Cincinnati OH 45202

The foregoing Consent Agreement in the Matter of **The Kroger Co. d/b/a Heritage Farms Dairy**, **Docket No. CAA-04-2023-0204(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**The Kroger Co. d/b/a Heritage Farms  
Dairy,**

Respondent.

Docket No. CAA-04-2023-0204(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **The Kroger Co. d/b/a Heritage Farms Dairy, Docket No. CAA-04-2023-0204(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

To Respondent: Kevin N. McMurray, Attorney  
Frost Brown Todd LLP  
kmcemurray@fbtlaw.com  
301 E 4th Street, Suite 3300  
Cincinnati, OH 45202  
(513) 651-6160

To EPA: Jordan Noles, Case Development Officer  
noles.jordan@epa.gov  
  
Ellen Rouch, Attorney-Advisor  
rouch.ellen@epa.gov

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Shannon L. Richardson, Regional Hearing Clerk  
r4\_regional\_hearing\_clerk@epa.gov



## Appendix A

### Supplemental Environmental Project for The Kroger Co. d/b/a Heritage Farms Dairy

The Respondent will purchase and donate the following equipment to the SEP Recipient no later than six months from the Effective Date of this CAFO:

1. Lion MT4 Chem Suit, (3)
2. ToxiRae Pro Single Gas Meter, (2)
3. Ammonia (NH<sub>3</sub>) sensor (2)
4. Andax Industries Hazmat De-Con Shower (1)
5. Reference Cards for Hazmat (50)
6. 3M Scott Air Purifying Respirator (1)
7. 3M Scott AV-632 Bayonet Adapters (packs of 5) (4)
8. Chem/Bio Emergency Triage Tags (25 per box) (6)
9. Series "A-1" Universal Hazardous Materials Response Kit (3)
10. Series "C-2" External Pipe Leak Control Kit (1)
11. Series "C-3" External Pipe Leak Control Kit (1)
12. Hazmat F, KI, & pH Test Paper Kit (3)
13. M8/C8 Chemical Agent Liquid Detector (3)
14. Claw MINI Hazmat Test Paper Card (5)
15. Lid Loc Dome Clamp (pack of 4) (1)
16. Emergency Kit-A for 100lbs to 150lbs cylinder (1)
17. Training DVDs for emergency kits A, B and C (3)
18. Training DVDs for Anhydrous Ammonia (1)