

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX



IN THE MATTER OF:

Safeway, Inc.  
2434 East Pecan Road  
Phoenix, AZ 85040

Respondent.

Docket No.  
CAA(112r)-09-2020-0073

CONSENT AGREEMENT  
AND FINAL ORDER  
40 C.F.R. §§ 22.13 and 22.18

CONSENT AGREEMENT

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).

3. Respondent is Safeway, Inc. (“Respondent”), a subsidiary of Albertsons Companies, Inc.

4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to

settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

5. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

6. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

**B. GENERAL ALLEGATIONS**

7. Respondent owns and operates the Safeway Phoenix Ice Cream Plant located at 2434 East Pecan Road in Phoenix, Arizona (“Facility”). Respondent manufactures and packages ice cream in various size containers and ships the products to local retail outlets in the Southwest.

8. On June 27, 2019, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11004-12, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA.

9. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

11. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

12. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7412(r).

13. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

14. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, owners, and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

15. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility that has such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

16. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

17. At all times relevant to this CA/FO, Respondent had 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

**C. ALLEGED VIOLATIONS**

**COUNT I**

(Failure to comply with process safety information requirements for inventory)

18. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

19. 40 C.F.R. § 68.65(c)(1)(iii) specifies that process safety information pertaining to the technology of a process shall include the maximum intended inventory.

20. Based on EPA's inspection and information gathered during EPA's investigation, Respondent's process safety information did not document and calculate the maximum intended inventory of anhydrous ammonia throughout the refrigeration system at the Facility.

21. By failing to comply with the process safety information requirements for inventory, Respondent violated 40 C.F.R. § 68.65(c)(1)(iii).

**COUNT II**

(Failure to comply with the process safety information requirements for system information)

22. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

23. 40 C.F.R. § 68.65(d)(1) specifies that information pertaining to the equipment in the process includes (i) materials of construction; (ii) piping and instrument diagrams (P&IDs); (iii) electrical classification; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999; and (viii) safety systems (e.g. interlocks detection or suspension systems).

24. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not determine the electrical classification or develop an electrical classification drawing for the refrigeration system.

25. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not develop or document the design basis for the sizing of the pressure relief valves ("PRVs") for the refrigeration system.

26. By failing to comply with the process safety information requirements for system information, Respondent violated 40 C.F.R. § 68.65(d)(1)(i).

### **COUNT III**

(Failure to comply with the process safety information requirements for labeling)

27. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

28. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.

29. ANSI/IIAR 2-2014, Section 5.14.4, IIAR Bulletin 109, Section 4.7.6, IIAR Bulletin 114, Section 4.1.1 through 4.1.8, and ANSI/American Society of Mechanical Engineers ("ASME") 13.1-2007, require ammonia piping mains, headers, and branches to be identified with the contents (i.e., "AMMONIA"), and also include the physical state of the ammonia, the pressure level of the ammonia (i.e., low or high), the pipe service, and the direction of flow.

30. ANSI/IIAR 2-2014, Appendix J.7.1, requires the National Fire Protection Association ("NFPA") 704 ammonia fire diamond for indoor ammonia refrigeration equipment to be designated "3, 3, 0."

31. ANSI/IIAR 2-2014, Section 6.12.2, states that a clearly identified control switch for emergency ventilation with a tamper-resistant cover must be located outside the machinery room door and adjacent to the designated principal machinery room door. The switch must have

“ON/AUTO” override capability for emergency ventilation and the function of the switch must be clearly marked by signage near the controls.

32. ANSI/IIAR 2-2014, Section 17.6, requires ammonia leak detection alarms to be identified by signage adjacent to visual and audible alarm services.

33. ANSI/IIAR 2-2014, Section 6.15.1, requires buildings and facilities with refrigeration systems to be provided with placards in accordance with NFPA 704 and the Mechanical Code.

34. ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) 15-2016, Section 11.2.1, requires each refrigerating system erected on the premises to be provided with a legible permanent sign, securely attached and easily accessible, indicating a) the name and address of the installer, b) the refrigerant number and amount of refrigerant, c) the lubricant identity and amount, and d) the field test pressure applied.

35. ANSI/IIAR 2-2014, Section 5.15, requires the person in charge of the premises at which the refrigeration system is installed to provide directions for emergency shutdown at a location that is readily accessible to trained refrigeration system staff and trained emergency responders. The schematic drawings or signage shall include the following: 1) instructions with details and steps for shutting down the system in an emergency, 2) the name and telephone numbers of the refrigeration operating, maintenance, and safety personnel, 3) the names and telephone numbers of all corporate, local, state, and federal agencies to be contacted as required in the event of a reportable incident, and 4) quantity of ammonia in the system.

36. Based on EPA’s inspection and information gathered during EPA’s investigation, portions of the ammonia refrigeration piping on the roof, adjacent to the condensers, in the ammonia refrigeration units (“AMR”), on the evaporator piping, and in the penthouses either have damaged or missing labels that should identify the contents, physical state, or direction of flow.

37. Based on EPA's inspection and information gathered during EPA's investigation, the NFPA diamonds at the entry doors to AMRs 1 and 2 have a "3, 4, 0" designation that should be a "3, 3, 0" designation.

38. Based on EPA's inspection and information gathered during EPA's investigation, the emergency ventilation manual control switch adjacent to the primary entry door and secondary entry doors into AMR 2 was not labeled correctly. The sign above the switch indicated "Emergency Ventilation Break Glass to Start," but the cover over the switch indicated, "To Stop Refrigeration."

39. Based on EPA's inspection and information gathered during EPA's investigation, the visual and auditory ammonia leak detection alarms located at the exterior entrances to AMR 2 were not labeled to identify their function.

40. Based on EPA's inspection and information gathered during EPA's investigation, the primary entry doors were not labeled to indicate the presence of anhydrous ammonia.

41. Based on EPA's inspection and information gathered during EPA's investigation, there was no signage in the AMRs with the contact information of the persons who installed the system, the quantity of ammonia in the system, the type and quantity of refrigerant oil in the system, and the field test pressures applied.

42. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not post outside of AMR 2 schematic drawings and procedures for shutting down the refrigeration system in an emergency, including the name and telephone numbers of emergency responders and refrigeration operating, maintenance, and management staff, and the names and telephone numbers of all corporate, local, state, and federal agencies to be contacted in the event of an ammonia release.

43. By failing to comply with the process safety information requirements for labeling, Respondent violated 40 C.F.R. § 68.65(d)(2).

**COUNT IV**

(Failure to comply with process safety information for emergency switches, notification, and mechanical design)

44. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with RAGAGEP. EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.

46. ANSI/IIAR 2 Bulletin 109, Section 4.9.7, requires pressure-relief valves discharging to the atmosphere to be replaced or inspected, cleaned, and tested every five years of service.

47. ANSI/IIAR 2 Bulletin 110, Section 6.6.3, allows an alternative to the prescriptive replacement interval (i.e., five years), to be developed based on documented in-service relief valve life for specific applications using industry accepted good practices of relief valve evaluation.

48. NFPA 1-2014, Section 11.1.7.6, states that extension cords shall not be used as a substitute for permanent wiring.

49. ANSI/IIAR 2014, Section 6.10.2 and ANSI/ASHRAE 15-2016, Section 8.11.2, require machinery room doors to 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 outward for occupants leaving the machinery room in an emergency.

50. ANSI/IIAR 2-2014, Section 17.4, requires a leak detection sensor, or the inlet of a sampling tube that draws air to a leak detection sensor to be mounted in a position where ammonia from a leak is expected to accumulate. In rooms equipped with continuous exhaust ventilation, the



location of leak detection sensors and sampling tubes must take into account the air movement toward the inlet of the ventilation system. Leak detection sensors and sampling tube inlets shall be positioned where they can be accessed for maintenance and testing.

51. ASHRAE 15-2016, Section 8.11.2.1, requires that each refrigerating machinery room contain a detector that must be located in an area where refrigerant from a leak will concentrate.

52. ANSI/IIAR 2-2014, Section 6.14.3.5, requires the machinery room exhaust to discharge vertically upward with a minimum velocity of 2,500 ft/min at the required ventilation flow rate.

53. ANSI/IIAR 2-2014, Section 6.14.5.2, and ANSI/IIAR Bulletin 109, Section 7 Checklists, require make-up air supply locations in the machinery room to be positioned to prevent short-circuiting of the make-up air directly to the exhaust.

54. ANSI/IIAR 2-2014, Section 6.14.5.4, requires intakes for make-up air to be positioned to draw uncontaminated outdoor air.

55. ANSI/IIAR 2-2014, Section 6.7.1, requires each machinery room to have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside the machinery room, each meeting the requirements in Section 6.7.3. Additional eyewash/safety showers must be installed such that the path of travel in the machinery room is no more than 55 ft to an eyewash/safety shower unit.

56. ANSI/IIAR 2-2014, Section 7.2.4, requires equipment to be protected where a risk of physical damage exists. Specifically, where equipment containing ammonia is in an area with heavy vehicular traffic during normal operations and a risk of impact exists, vehicle barriers or alternative protection shall be provided in accordance with the Fire Code.

57. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not replace the PRVs on the pressure vessels according to industry standards. A

total of 83 PRVs associated with the refrigeration system have been in place for longer than 5 years. Additionally, Respondent did not indicate in its PRV replacement schedule that it had considered developing an alternative schedule.

58. Based on EPA's inspection and information gathered during EPA's investigation, extension cords are being used instead of permanent wiring on the roof.

59. Based on EPA's inspection and information gathered during EPA's investigation, an exit door for AMR 1 is not tight sealing at the bottom.

60. Based on EPA's inspection and information gathered during EPA's investigation, the ammonia detectors are located on an exterior wall of AMR 1 below ammonia piping and away from compressors and ammonia containing pressure vessels. In AMR 2, the ammonia detectors are located behind boxes and other materials and away from ammonia containing equipment.

61. Based on EPA's inspection and information gathered during EPA's investigation, the emergency exhaust ventilation from AMR 2 discharges horizontally rather than vertically on the roof.

62. Based on EPA's inspection and information gathered during EPA's investigation, the air intake into AMR 2 is located near the ceiling and above the compressors and ammonia containing equipment, which could lead to short-circuiting.

63. Based on EPA's inspection and information gathered during EPA's investigation, the air intake into AMR 1 is behind ammonia containing piping and pressure vessels.

64. Based on EPA's inspection and information gathered during EPA's investigation, there is no eyewash/safety shower located inside AMR 2.

65. Based on EPA's inspection and information gathered during EPA's investigation, the ammonia evaporators suspended from the ceiling in the loading dock were not protected from lift trucks stacking product.

66. By failing to comply with the process safety information requirements for emergency switches, notification, and mechanical design, Respondent violated 40 C.F.R. § 68.65(d)(2).

**COUNT V**

(Failure to comply with process safety information for mechanical design)

67. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

68. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with RAGAGEP. EPA generally determines RAGAGEP with reference to standards published by established industry organizations and manufacturers' requirements and recommendations.

69. 40 C.F.R. § 68.65(d)(3) specifies that for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, owners or operators must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

70. 40 C.F.R. § 68.65(d)(1)(i) specifies that information pertaining to the equipment in the process includes (i) materials of construction; (ii) piping and instrument diagrams (P&IDs); (iii) electrical classification; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999; and (viii) safety systems (e.g. interlocks detection or suspension systems).

71. According to ANSI/IIAR 2-2014, Section 6.14.7.1, AMR emergency ventilation should provide at least 30 air exchanges per hour.

72. IIAR 2-2014, Section 6.14.5.1, requires the ventilation system to create a negative pressure of 0.25 inches water column.

73. ANSI/IIAR Bulletin 109, Section 4.10.7, requires removal of ice formations that could endanger refrigerant piping or other components and the conditions that cause the ice buildup to be corrected.

74. NFPA 1-2012, Section 53.3.1.1, requires refrigeration systems to be operated and maintained in a safe and operable condition, free from accumulations of oil, dirt, waste, excessive corrosion, other debris, or leaks, and in accordance with ASHRAE and the mechanical code.

75. ANSI/IIAR 2-2014, Section 5.10.1, requires piping and equipment not intended for heat exchange to be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in areas where condensation and excessive frost buildup could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system.

76. IIAR Bulletin 110, Section 4.7.5, requires insulated piping showing signs of vapor barrier failure to have the insulation removed and the pipe inspected.

77. IIAR Bulletin 110, Section 6.4.4.3, requires all wet insulation to be removed and the affected surface of the pressure vessel to be examined and treated with rust preventative coating before re-insulation. Where the insulation is unsound or damaged, the insulation must be removed and the underlying pressure vessel or shell-and-tube heat exchanger must be inspected.

78. NFPA 1-2012, Section 53.3.1.1 requires refrigeration systems to be operated and maintained in a safe and operable condition, free from accumulations of oil, dirt, waste, excessive corrosion, other debris, or leaks, and in accordance with ASHRAE 15 and the mechanical code.

79. IIAR Bulletin 109, Section 4.7.4, requires uninsulated refrigerant piping to be examined for signs of corrosion, and if corrosion exists, the pipe should be cleaned down to the bare metal and painted with a rust preventative paint and badly corroded pipe should be replaced.

80. ASHRAE 15-2016, Section 8.11.7, specifies that there shall be no airflow to or from an occupied space through the machinery room unless the air is ducted and sealed in such a manner as to prevent any refrigerant leaking from entering the airstream. Access doors and panels in ductwork and air-handling units must be gasketed and tight fitting.

81. ANSI/IIAR 2-2014, Section 6.6.2, requires the pipes penetrating the machinery room separation to be sealed to the walls, ceiling, or floor through which they pass in accordance with Section 6.2.1.

82. Based on EPA's inspection and information gathered during EPA's investigation, the emergency and temperature control combined ventilation system for AMR 2 provides inadequate air exchanges of 27.9 air exchanges per hour. The documentation provided by Respondent also indicates the ventilation system creates a negative pressure of 0.3 inches water column, which is greater than the negative 0.25 inches water column required by IIAR 2-2014, Section 6.14.5.1.

83. Based on EPA's inspection and information gathered during EPA's investigation, there is extensive ice build-up on the ammonia piping in the West penthouse evaporator and on the ammonia piping vessels in AMR 1.

84. Based on EPA's inspection and information gathered during EPA's investigation, there is damaged insulation vapor barrier and damaged insulation in numerous locations on the roof, including outdoor pressure vessels and piping in the ice cream production area.

85. Based on EPA's inspection and information gathered during EPA's investigation, the ammonia piping adjacent to the condensers have surface corrosion and are not painted. An oil pot in AMR 1 also has significant corrosion and metal pitting.

86. Based on EPA's inspection and information gathered during EPA's investigation, the penetrations for piping through the walls of AMR 1 were not sealed.

87. By failing to comply with the process safety information requirements for mechanical design, Respondent violated 40 C.F.R. § 68.65(d)(2), 40 C.F.R. § 68.65(d)(3), and 40 C.F.R. § 68.65(d)(1)(i).

#### COUNT VI

(Failure to comply with process hazard analysis)

88. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

89. 40 C.F.R. § 68.67(e) requires that owners and operators establish a system to promptly address the findings and recommendations in the process hazard analysis ("PHA"); 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; and develop a written schedule of when these actions are to be accomplished.

90. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not promptly address the PHA recommendations, because eighty percent of the 2013 PHA recommendations remained open as of June 2019, and the Facility did not provide EPA the status of the 2018 PHA recommendations.

91. By failing to comply with the process hazard analysis requirements, Respondent violated 40 C.F.R. § 68.67(e).

**COUNT VII**

(Failure to comply with operating procedures)

92. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

93. 40 C.F.R. § 68.69(c) requires that owners or operators review the operating procedures 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), and certify annually that these operating procedures are current and accurate.

94. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not update the standard operation procedures ("SOPs") to reflect changes in the process. The SOPs for the new stainless-steel ammonia condensers installed in 2016 indicate the last revision date was March 2010. Although Respondent updated its original electronic refrigeration control system in 2016 with a more modern computer control system, none of the SOPs were updated to reflect this change.

95. By failing to comply with the operating procedure requirements, Respondent violated 40 C.F.R. § 68.69(c).

**COUNT VIII**

(Failure to comply with mechanical integrity for non-destructive testing)

96. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

97. 40 C.F.R. § 68.73(d)(3) specifies that 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.

98. American Petroleum Institute (“API”) 510, Section 6.5.1.1, specifies that unless justified by a Risk Based Inspection assessment, the period between internal or on-stream inspections shall not exceed one-half the remaining life of the vessel or 10 years, whichever is less.

99. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent did not conduct inspections and test equipment according to industry standards. Although Respondent stated in its documentation provided to EPA that nondestructive testing had been performed on the piping and ammonia containing pressure vessels at the Facility once, the ammonia containing pressure vessels at Facility were installed in early 1990 (nearly 25 years ago) according to facility personnel.

100. By failing to comply with the mechanical integrity requirements for non-destructive testing, Respondent violated 40 C.F.R. § 68.73(d)(3).

**COUNT IX**

(Failure to comply with mechanical integrity for overdue replacement)

101. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

102. 40 C.F.R. § 68.73(e) requires owners and operators 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.

103. Based on EPA’s inspection and information gathered during EPA’s investigation, Respondent did not correct deficiencies in equipment in a safe and timely manner. The 2015 mechanical integrity (“MI”) audit identified two PRVs having incorrect pressure settings that could cause the pressure vessels they are intended to protect to be damaged or rupture. The MI audit advised that these PRVs be replaced with PRVs having pressure settings equal to or less than



the Maximum Allowable Working Pressure (“MAWP”) of the pressure vessels they are protecting. As of June 2019, these PRVs had not been replaced with PRVs having pressure ratings less than or equal to the MAWP of the vessels. Additionally, of the 41 action items identified in the 2015 MI audit, Respondent’s documentation indicates only one action item had been addressed as of June 2019.

104. Respondent has not replaced the pressure relief devices (“PRD”) at their designated frequency. Three PRDs with valve tags 633, 788, and 842 were observed to have exceeded their replacement date by approximately eight months at the time of EPA’s inspection.

105. By failing to comply with mechanical integrity requirements for overdue replacements, Respondent violated 40 C.F.R. § 68.73(e).

**COUNT X**

(Failure to comply with management of change)

106. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

107. 40 C.F.R. § 68.75(d) requires owners and operators to update changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process, if a change covered by this paragraph results in a change in the process safety information required by 40 C.F.R. § 68.65.

108. 40 C.F.R. § 68.75(e) requires owners and operators to update changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process, if a change covered by this paragraph results in a change in the process safety information required by 40 C.F.R. § 68.69.

109. 40 C.F.R. § 68.77(a) requires owners and operators to perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

110. Based on EPA's inspection and information gathered during EPA's investigation, Respondent has not updated its piping and instrumentation designs ("P&IDs) to reflect the installation of three new stainless-steel condensers in 2016, including the new piping and computer controls.

111. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not update the condenser P&IDs to reflect the replacement of the existing condensers with new stainless-steel condensers in 2016.

112. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not update operating procedures after installation of new equipment and failed to update the SOPs for operation of the new stainless-steel condensers and control systems that were installed in 2016.

113. Based on EPA's inspection and information gathered during EPA's investigation, Respondent did not complete a pre-startup and safety review ("PSSR") before equipment startup. Respondent did not complete the PSSR for replacement for the condensers in 2016 including the requirements to update P&IDs and SOPs.

114. By failing to comply with management of change requirements, Respondent violated 40 C.F.R. § 68.75(d), 40 C.F.R. § 68.75(e), and 40 C.F.R. § 68.77(a).

**D. CIVIL PENALTY**

115. EPA proposes that Respondent be assessed, and Respondent agrees to pay **TWO-HUNDRED SIXTY-EIGHT THOUSAND AND FOUR HUNDRED AND SIX DOLLARS (\$268,406.00)**, as the civil penalty for the violations alleged herein.

116. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

**E. ADMISSIONS AND WAIVER OF RIGHTS**

117. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section H of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

118. Respondent does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

119. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

**F. PARTIES BOUND**

120. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) have been paid, the compliance tasks under Section G have been completed, and any delays in performance and/or stipulated penalties have been resolved.

121. No change in ownership or legal status relating to the Facility will in way alter Respondent's obligations and responsibilities under this CA/FO.

122. Until all the requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

123. The undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

**G. COMPLIANCE TASKS**

124. All submissions required in this section shall be in writing and sent to Rick Sakow, electronically at [Sakow.rick@epa.gov](mailto:Sakow.rick@epa.gov), or, if a hard copy is requested, to:

Rick Sakow (ENF-2-2)  
Enforcement Compliance and Assurance Division  
U.S. Environmental Protection Agency – Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

125. If Respondent is unable to complete any of the compliance tasks required in this section within the associated schedule, Respondent shall submit a written request, including the basis for the request, for an extension to EPA. Based on this request, EPA may grant an extension to the aforementioned schedule.

126. Process Safety Information for Labeling. Within one year of the effective date of this CA/FO, Respondent shall submit to EPA a certification that certain portions of the ammonia

refrigeration piping on the roof, the piping adjacent to the condensers, the piping in the AMRs, the piping on the evaporator, and the piping in the penthouses are properly labeled identifying the contents, physical state, and direction of flow.

127. Process Safety Information for Emergency Switches, Notification, and Mechanical Design. Within one year of the effective date of this CA/FO, Respondent shall submit to EPA a certification that the emergency exhaust ventilation for AMR 2 has been corrected and discharges vertically instead of horizontally, that the make-up air supply locations into AMR 2 are positioned to prevent short circuiting and are not located near the ceiling and above the compressors and ammonia containing equipment, and that the air intake into AMR 1 is positioned to draw uncontaminated air, and not positioned behind ammonia containing piping and pressure vessels.

128. Process Safety Information for Mechanical Design. Within one year of the effective date of this CA/FO, Respondent shall submit to EPA a certification that the emergency and temperature control combined ventilation system for AMR 2 shall provide adequate air exchanges at 30 air exchanges per hour, that the ventilation system creates a negative pressure of 0.25 inches water column instead of 0.3, and that there is no extensive ice build-up on the ammonia piping in the West penthouse evaporator and on the ammonia piping and vessels in AMR 1.

#### **H. PAYMENT OF CIVIL PENALTY**

129. Respondent consents to the assessment of and agrees to pay civil penalties of **TWO-HUNDRED SIXTY-EIGHT THOUSAND AND FOUR HUNDRED SIX DOLLARS (\$268,406.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

130. Respondent shall pay the civil penalty within sixty (60) days of the Effective Date of this CA/FO, as established in Section L of this CA/FO.

131. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077

St. Louis, MO 63101  
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact - Jesse White (301-887-6548)

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 31006  
CTX Format

Online Payment:

This payment option can be accessed from the information below:  
[www.pav.gov](http://www.pav.gov)  
Enter "sfol.1" in the search field  
Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
[Armsey.Steven@epa.gov](mailto:Armsey.Steven@epa.gov)

And

Rick Sakow  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
[Sakow.Rick@epa.gov](mailto:Sakow.Rick@epa.gov)

132. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

133. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

**I. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

134. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

135. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of the CA/FO.

136. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

137. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.



138. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

**J. RESERVATION OF RIGHTS**

139. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, right and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

140. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

141. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

142. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

**K. MISCELLANEOUS**

143. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

144. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

145. Each party to this action shall bear its own costs and attorneys' fees.

146. Respondent consents to entry of this CA/FO without further notice.


**L. EFFECTIVE DATE**

147. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent Safeway, Inc.

DATE: 09-24-2020 | 14:58:53 PDT

DocuSigned by:  
  
BY: AD02421B3B1E486...  
Name: Daniel S. Day  
Title: VP, Litigation and Regulatory Compliance

United States Environmental Protection Agency, Region 9

DATE: \_\_\_\_\_

**AMY MILLER-**  
**BOWEN**  
BY: \_\_\_\_\_  
Amy C. Miller-Bowen  
Director, Enforcement and Compliance Assurance  
Division

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2020.09.29 08:40:52  
-07'00'

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 [ Docket No. CAA(112r)-09-2020-0073 ] be entered and that Respondent pay a civil penalty TWO-HUNDRED SIXTY-EIGHT THOUSAND AND FOUR HUNDRED SIX DOLLARS (\$268,406.00) due within sixty (60) days from the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

\_\_\_\_\_  
Date

**Steven L. Jawgiel** Digitally signed by Steven L. Jawgiel  
Date: 2020.09.29 13:17:37 -07'00'

\_\_\_\_\_  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

**CERTIFICATE OF SERVICE**

This is to certify that the fully executed Consent Agreement and Final Order in the matter of Safeway, Inc. [ CAA(112r)-09-2020-0073 ] was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Daniel Day  
Vice President, Litigation and Regulatory Compliance  
Albertsons Companies  
Dan.Day@albertsons.com

FOR COMPLAINANT: Ylan Nguyen  
Assistant Regional Counsel  
U.S. EPA, Region IX  
Nguyen.Ylan@epa.gov

\_\_\_\_\_  
Steven Armsey  
Regional Hearing Clerk

\_\_\_\_\_  
Date