UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. **7018 0680 0000 3319 7607**
Return Receipt Requested

Mr. Stephen Kovacich
Managing Partner
The Uni-Kool Partners
2210 East 24th Street
Yuma, Arizona 85364

MAR 0 4 2020

RE: Consent Agreement and Final Order
In the Matter of Uni-Kool Partners

Dear Mr. Kovacich:

Please find enclosed a copy of the final executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX, and Uni-Kool Partners. This CA/FO sets out the terms for resolution of violations of Clean Air Act Section 112(r) and Emergency Planning and Community Right-to-Know Act Section 312 discovered during a routine compliance evaluation inspection at The Uni-Kool Partners facility, located at 2210 East 24th Street, Yuma, Arizona, 85364. The Uni-Kool Partners' full compliance with the terms of this CA/FO will close this case. If you have any questions regarding the regulations governing your operations or the rules which govern the proceedings terminated by the enclosed document, please have your counsel contact Diane Prend, in the Office of Regional Counsel, at (415) 972-3825.

Sincerely,

Amy C. Miller, Director
Enforcement and Compliance Assurance Division

Enclosure

** FILED **
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U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF: The Uni-Kool Partners 2210 E 24th Street Yuma, Arizona 85364 Respondent.	)))))))))	**Docket No.** CAA(112r)-09-2019-00_17 **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"), 42 U.S.C. §§ 7413(a)(3)(A) and (d), Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, 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 The Uni-Kool Partners ("Respondent").

4. The Administrator of the EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA and EPCRA, Delegation 7-6-A, dated August 4, 1994 (CAA); Delegation 22-3-A, dated July 20, 2016 (EPCRA). 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 (CAA); Regional Delegation R9-22-3-A, dated February 11, 2013 (EPCRA). 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), and Section 325 of EPCRA, 42 U.S.C. § 11045.

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)(7) of the CAA, 42 U.S.C. § 7412(r)(7); and Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.

6. Complainant 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 a fresh produce storage and distribution facility on approximately 42 acres, located at 2210 East 24th Street in Yuma, Arizona (the "Facility"). The Facility utilizes ammonia refrigeration systems for cooling, cold storage and ice-making.

8. On March 6, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and Section 304-312 of EPCRA, 42 U.S.C. §§ 11004-22. Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondent violated certain provisions of the CAA and EPCRA.

9. In a letter dated February 13, 2019, the United States Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

10. 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), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. 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). The Facility is also a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

12. At all times referred to herein, Respondent was the "owner or operator" of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

CAA Section 112(r)

13. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), 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 source in order to protect human health and the environment.

14. 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 has such 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.

15. 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.

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

EPCRA Section 312

17. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.,* to submit an annual emergency and hazardous chemical inventory form ("inventory form") containing information on hazardous chemicals present at the facility during the preceding calendar year above threshold levels established in 40 C.F.R. § 370.40(b). This inventory must be submitted by March 1 of each year to the State Emergency Response Commission ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the fire department with jurisdiction over the facility. 40 C.F.R. § 370.45.

18. Ammonia is an "extremely hazardous chemical" as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. § § 11021(e) and 11022(c), with a threshold planning quantity of 500 pounds. 40 C.F.R. Part 355, App. A & B.

C. ALLEGED VIOLATIONS

19. Based on foregoing, EPA alleges that Respondent has violated Section 112(r)(7) of the CAA, Section 312 of EPCRA, and the codified rules of 40 C.F.R. Part 68, governing the CAA's Chemical Accident Prevention Provisions, as follows:

COUNT I

(Failure to submit annual chemical inventory forms)

20. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

21. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations, 40 C.F.R. §§ 370.40(a) and 370.45, owners and operators of facilities must annually submit emergency and hazardous chemical inventory information to the appropriate state and local officials by March 1st.

22. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.42(s)(6), the emergency and chemical inventory information must include the maximum amount of the hazardous chemical present at the facility on any single day during the preceding calendar year.

23. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to timely submit the required inventory information for the Facility to the Arizona SERC, Yuma LEPC and Yuma Fire Department during years 2015 and 2016,

in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, 40 C.F.R. §§ 370.40(a) and 370.45

24. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to correctly submit the maximum quantity of anhydrous ammonia at the Facility during calendar year 2015, in violation of 40 C.F.R. § 370.42(s)(6).

COUNT II

(Failure to comply with RMP requirements)

25. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

26. 40 C.F.R. § 68.12(a) requires owners and operators to submit a single RMP reflecting all covered processes pursuant to §§ 68.150 through 68.185.

27. 40 C.F.R. § 68.190(b)(1) requires owners and operators to revise and update their RMP at least once every five years from the date of its initial submission or the most recent update required by subsections (b)(2) through (7), whichever is later.

28. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to correctly identify the total quantity of anhydrous ammonia in the covered process in the interconnected Cool Room and Engine Room, in violation of 40 C.F.R. § 68.12(a).

29. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to timely update and revise its RMP, in violation of 40 C.F.R. § 68.190(b)(1).

COUNT III

(Failure to comply with hazard assessment requirements)

30. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

31. 40 C.F.R. § 68.25 requires owners and operators to conduct a hazard assessment for a potential worst-case scenario resulting from an accidental release of the regulated hazardous substances from the covered processes.

32. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to conduct an accurate hazard assessment for a potential worst-case release scenario resulting from an accidental release of anhydrous ammonia, in violation of 40 C.F.R. § 68.25.

COUNT IV

(Failure to comply with process safety information requirements)

33. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

34. 40 C.F.R. § 68.65(d)(1)(ii) requires that information pertaining to equipment in the covered process include piping and instrumentation diagrams (P&IDs).

35. At the time of the inspection, EPA observed at least three instances in which Respondent's P&IDs did not accurately reflect the covered process equipment in the field, including but not limited to tags not matching, a missing temperature transmitter, and missing valves, in violation of 40 C.F.R. § 68.65(d)(1)(ii).

COUNT V

(Failure to comply with process safety information requirements)

36. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

37. 40 C.F.R. § 68.65(d)(2) requires that owners and operators document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP"). EPA generally determines RAGAGEP with reference to manufacturer's requirements and recommendations, and standards published by established industry organizations, including the American National Standards Institute ("ANSI"), the International Institute of Ammonia Refrigeration ("IIAR"), and The American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers ("ANSI/ASHRAE").

38. ANSI/IIAR" 2-2014, Section 5.9 requires ammonia refrigeration systems have a means for removing oil from locations in piping and equipment where oil accumulation is expected. Section 5.9.3 requires oil removal be accomplished in by one or more of the following: 1) a rigid-piped oil return or transfer system; 2) a vessel equipped with a shut-off valve in series with a self-closing shut-off valve; and 3) a valve and piping assembly at the draining point where oil is removed from the system.

39. ANSI/IIAR 2-2014, Section 15.5.1.2 requires the termination of a pressure relief device be discharged not less than fifteen feet above grade and not less than twenty feet from windows, ventilation intakes or exits. Section 15.5.1.5 also requires the termination of a discharge be directed upward and arranged to avoid spraying ammonia on persons in the vicinity. ANSI/ASHRAE15-2016, Section 9.7.8.2(d), further provides that the

termination point of a vent discharge line shall be made in a manner that prevents discharged refrigerant from spraying directly onto personnel that might be in the vicinity.

40. During the inspection, EPA observed that Respondent did not have self-closing/quick closing valves on some oil pots in its ammonia refrigeration system.

41. Based on EPA's inspection and information gathered during EPA's investigation, the pressure relief valve ("PRV") on the large tank outside the Engine Room discharges less than fifteen feet above ground level. EPA also observed pressure safety valve discharges on a recirculator and a high pressure receiver without discharge lines, which are necessary to prevent discharged refrigerant from spraying onto personnel or other people that may be in the vicinity.

42. By failing to comply with RAGAGEP, Respondent violated of 40 C.F.R. § 68.65(d)(2).

COUNT VI

(failure to comply with process hazard analysis requirements)

43. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

44. 40 C.F.R. § 68.67(e) requires that owners and operators establish a system to promptly address the findings and recommendations identified 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 completed.

45. 40 C.F.R. § 68.67(f) requires the PHA be updated and revalidated every five years by a team of experts to assure that the PHA is consistent with the current process.

46. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to adequately track actions addressing all of the findings and recommendations identified in the 2009 and 2016 PHA in a timely manner, in violation of 40 C.F.R. § 68.67(e).

47. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to update and revalidate its 2009 PHA in a timely manner, in violation of 40 C.F.R. § 68.67(f).

COUNT VII

(failure to comply with operating procedure requirements)

48. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

49. 40 C.F.R. § 68.69(a)(1) requires owners and operators to develop and implement written operating procedures with clear instructions for safely conducting each phase of the operations involved in each covered process.

50. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to develop and implement operating procedures for each operating phase for the fixed equipment at the Facility, in violation of 40 C.F.R. § 68.69(a)(1).

COUNT VIII

(failure to comply with training requirements)

51. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

52. 40 C.F.R. § 68.71 requires owners and operators to ascertain that each employee involved in operating a process has received the required training, including initial training and a

refresher training at least every three years. Owners and operators are also required to prepare a record which contains the identity of the employee, the date of the training, and the means used to verify that the employee understood the training.

53. During EPA's investigation of the Facility, Respondent could not provide documentation showing that its employees had received the required training, in violation of 40 C.F.R. § 68.71.

COUNT IX

(failure to comply with mechanical integrity requirements)

54. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

55. 40 C.F.R. § 68.73(d) requires that inspections and tests be performed on process equipment, that the inspection and testing procedures follow RAGAGEP, and that the frequency of inspections and tests of process equipment be consistent with applicable manufacturers' recommendations. This section also requires owners and operators to document each inspection and test that has been performed on any process equipment.

56. IIAR Bulletin 109, Section 4.9.7 and Bulletin #110, Section 6.6.3 require PRVs to be replaced every five years or per manufacturers' recommendations.

57. During EPA's inspection of the Facility, EPA observed several PRVs without tags to show the date of replacement was within the last five years. Respondent could provide no other documentation showing the PRVs had been replaced every five years or were maintained as required under RAGAGEP standards, in violation of 40 C.F.R. § 68.73(d).

COUNT X

(failure to comply with compliance audit requirements)

58. Paragraphs 1 through 19, above, are incorporated herein by this reference as if they were set forth in their entirety.

59. 40 C.F.R. § 68.79(a) requires owners and operators to certify that they have evaluated compliance with the provisions for each covered process, at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

60. 40 C.F.R. § 68.79(d) requires owners and operators to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

61. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to conduct a compliance audit within three years of the previous 2011 compliance audit, in violation of 40 C.F.R. § 68.79(a).

62. Based on EPA's inspection and information gathered during EPA's investigation, Respondent failed to promptly determine and document that all deficiencies identified during the 2016 compliance audit had been corrected, in violation of 40 C.F.R § 68.79(d).

D. CIVIL PENALTY

63. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **TWENTY-SIX THOUSAND TWO HUNDRED FIFTY DOLLARS ($26,250)**, as the civil penalty for the violations alleged herein.

64. 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 the "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act," dated September 30, 1999, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

65. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

66. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to the contest of 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 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.

67. Complainant 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 ARE BOUND

68. 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) has been paid, the supplemental environmental project ("SEP") has been completed, and any delays in performance and/or stipulated penalties have been resolved.

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

70. Until all 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.

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

G. PAYMENT OF CIVIL PENALTY

72. Respondent consents to the assessment of and agrees to pay civil penalties of **TWENTY-SIX THOUSAND TWO HUNDRED FIFTY DOLLARS ($26,250)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the alleged violations of Sections 112(r) of the CAA, 42 U.S.C. § 7412(r),

Section 312 of EPCRA, 42 U.S.C. § 11022, and related regulations, as alleged in Section C above.

73. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is 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.

74. All payments shall indicate the name of the Facility, the EPA identification number for the Facility, the Respondent's name and address, and the EPA docket number of this action, as set forth reflected on this CA/FO. 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.pay.gov
Enter "sfol.l" 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

And

Donald Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 9
75 Hawthorne Street

San Francisco, CA 94105

75. 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 the 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.

76. 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.

H. SUPPLEMENTAL ENVIRONMENTAL PROJECT

77. As a condition of settlement, Respondent shall perform the SEP specified in this Section. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

78. The SEP includes the purchase and installation of a new control system at the Facility with programmable logic comptroller and human machine interface components, which will integrate: (1) system alarms with email and text messaging capabilities; (2) automatic refrigeration pump control functionality including safety interlock capability; (3) ammonia detection for automatic shutdown of the machine room; (4) alarm strobe lights and horns at machine room entrances to indicate ammonia detection; (5) an emergency ventilation control switch at the primary machine room entrance; (6)

emergency ventilation fan current switches for proof of run; and (7) an emergency ventilation reset capability only inside the machine room.

79. The SEP has environmental, health and safety benefits including enabling the automatic and immediate shutdown of equipment in the event of a release or other operational upset or failure, automatic and immediate alarms and ventilation, and improved monitoring and remote operations. The components specified in this SEP are not required by 40 C.F.R. Part 68 or currently reflected in RAGAGEP references.

80. Respondent shall expend at least **NINETY-EIGHT THOUSAND FOUR HUNDRED THIRTY-EIGHT DOLLARS ($98,438)** to complete the SEP described herein.

81. Respondent shall complete the SEP within twelve (12) months of the Effective Date of this CA/FO. Within ninety days (90) days of completion of the tasks outlined in Paragraph 78, above, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (1) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts, and correspondence with its contractor; (2) a brief narrative description of the environmental and public health and safety benefits resulting from implementation of the SEP; and (3) certification that the projects have been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

82. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty

of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The Final SEP Completion Report shall be submitted via hard copy or electronic mail to:

Donald Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Email: Nixon.Donald@epa.gov

83. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section I below.

84. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least **NINETY-EIGHT THOUSAND FOUR HUNDRED THIRTY-EIGHT DOLLARS ($98,438)**; (2) that, as of the date of this CA/FO, 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; (3) 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 CA/FO; (4) that Respondent has not received and will not receive credit for the SEP in

any other enforcement action; (5) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (6) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and (7) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this CA/FO.

85. Any public statement, oral or written, in print, film, or other media, if any, made by Respondent that references the SEP under this CA/FO, occurring on or after the date of Respondent's execution of this CA/FO, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

I. DELAY IN PERFORMANCE/STIPULATED PENALITIES

86. In the event 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 the 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.

87. In the event that Respondent fails to substantially conduct the SEP in accordance with this CA/FO, Respondent shall pay a stipulated penalty of ONE HUNDRED FIVE THOUSAND DOLLARS ($105,000) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 83.

88. If Respondent demonstrates that the SEP tasks described in Section H were completed but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Section H, Respondent shall pay a stipulated penalty to the United States that is the difference between ONE HUNDRED FIVE THOUSAND DOLLARS ($105,000) and the actual costs incurred by Respondent towards completion of the tasks described in Section H.

89. 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 Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of this CA/FO. 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. Complainant 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, its implementing regulations, and EPCRA. 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. 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

90. Except as addressed in this CA/FO, EPA hereby reserves all statutory and regulatory powers, authorities, rights 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 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 of the United States.

91. Compliance by Respondent with the terms of this CA/FO 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 relating to any federal, tribal, state or local permit.

92. 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

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

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

95. Each party to this action shall bear its own costs and attorney's fees.

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

L. EFFECTIVE DATE

97. 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.

In the Matter of The Uni-Kool Partners
Consent Agreement and Final Order

IT IS SO AGREED:

Respondent The Uni-Kool Partners,

DATE: 1-16-2020 BY: Stephen Kovacich

Stephen Kovacich
Managing Partner

Complainant United States Environmental Protection Agency, Region IX

DATE: 2/27/2020 BY: Amy C. Miller

Amy C. Miller, Director
Enforcement and Compliance Assurance Division

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)-09-2019-00~~1~~7) be entered and that Respondent pays a civil penalty of **TWENTY-SIX THOUSAND TWO HUNDRED FIFTY DOLLARS ($26,250)** due within thirty (30) days from the Effective Date of this CA/FO, and implement the Supplemental Environmental Project described in Section H of this CA/FO, in accordance with all terms and conditions of this CA/FO.

03/04/20

Date

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *The Uni-Kool Partners* (CAA(112r)-09-2020-2017), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Mr. Stephen Kovacich
Managing Partner
The Uni-Kool Partners
2210 E 24th Street
Yuma, Arizona 85364

HAND DELIVERED:

Complainant - Diane Prend, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, California 94105

Date: 2020-03-04

Steven Armsey
Steven Armsey
Regional Hearing Clerk
EPA, Region 9