



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2009

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dwight Hammond
Regulatory Manager
Univar USA, Incorporated
8500 West 68th Street
Bedford Park, Illinois 60501

Re: Consent Agreement and Final Order
Univar USA, Incorporated
Docket No: **RCRA-05-2009-0021**

Dear Mr. Hammond:

Enclosed, please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on SEP 28 2009 with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$15,000 in the manner prescribed in paragraph 48 of the CAFO, and reference all checks with the number **BD 2750942R013** and docket number **RCRA-05-2009-0021**. Your payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Jeff Connell, Minnesota Pollution Control Agency (w/CAFO)

**NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY
TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. RCRA-05-2009-0021
)	
Univar USA, Inc.)	Proceeding to Assess a Civil Penalty
Saint Paul, Minnesota)	Under Section 3008(a) of the Resource
)	Conservation and Recovery Act,
Respondent)	42 U.S.C. § 6928(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

RECEIVED
SEP 28 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Univar USA, Inc., a Washington corporation licensed to do business in the State of Minnesota.
4. U.S. EPA provided notice of commencement of this action to the State of Minnesota pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

13. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Minnesota final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective February 11, 1985. 50 Fed. Reg. 3756 (January 28, 1985).

14. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

15. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004.

General Allegations

16. Respondent was and is a "person" as defined by Minn R. 7045.0020, Subpart 66 and 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

17. Respondent is an "operator" or "owner," as those terms are defined under Minn R. 7045.0020, Subparts 62 and 64 respectively and 40 C.F.R. § 260.10, of a facility located at 845 Terrace Court, St. Paul, Minnesota (Facility).

18. At all times relevant to this CAFO, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

19. Respondent's Facility is a "facility," as that term is defined under Minn R. 7045.0020, Subpart 24 and 40 C.F.R. § 260.10.
20. Respondent held discarded paint-related material, non-asbestos roofing sealers and ammonium hydroxide (material) for a temporary period in a container before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.
21. Respondent characterized its paint-related material and non-asbestos roofing sealers as hazardous waste code D001.
22. Respondent characterized its ammonium hydroxide as hazardous waste code D002.
23. Respondent stored, transported, disposed of, or otherwise handled its material in two "containers," as that term is defined under Minn R. 7045.0020, Subpart 11 and 40 C.F.R. § 260.10.
24. Respondent's material was a "solid waste" as that term is defined under Minn R. 7035.0300, Subpart 100 and 40 C.F.R. § 261.2.
25. Respondent's material was a "hazardous waste" as that term is defined under Minnesota Statute, Section 116.06, Subdivision 11 and 40 C.F.R. § 261.3.
26. Respondent's holding of hazardous waste material in two containers constituted "storage," as that term is defined under Minn R. 7045.0020, Subpart 87 and 40 C.F.R. § 260.10.
27. On May 8, 2008, EPA conducted a compliance evaluation inspection of the Facility (the inspection).
28. Respondent applied for, and received, a treatment, storage and disposal facility (TSDF) hazardous waste storage permit (Permit) from the Minnesota Pollution Control Agency (MPCA). MPCA reissued the Permit on August 8, 2007, and it expires on August 8,

2012.

Count 1: Storage of Hazardous Waste in Violation of Permit Condition

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as though set forth in this paragraph.

30. Part II, B. of the Permit authorizes Respondent to store hazardous wastes in containers located in storage cell 1 or storage cell 2.

31. The storage cells referenced in paragraph 30, above, comprise a permitted hazardous waste storage unit located in the warehouse building at the Facility.

32. Between approximately January 10, 2005 and June 3, 2008, Respondent stored approximately nineteen pounds of hazardous waste material in two containers.

33. The two containers of hazardous waste material referenced in paragraphs 23 and 32 above were located in an area designated by Respondent as its Non Pickable Location.

34. The Non Pickable Location is not part of Respondent's permitted hazardous waste storage unit.

35. Respondent's storage of hazardous waste at a location other than storage cell 1 or storage cell 2 was a violation of the Permit.

Count 2: Failure to Make a Waste Determination

36. Complainant incorporates paragraphs 1 through 35 of this CAFO as though set forth in this paragraph.

37. The Permit requires Respondent to conduct its hazardous waste activities in accordance with the terms and conditions of the Permit and any other requirements imposed by law or Minnesota Rules.

38. Minn R. § 7045.0205 Subpart 3 [40 C.F.R. § 262.10(h)] states that the standards

applicable to generators established in Parts 7045.0205 to 7045.0325 apply to owners or operators of hazardous waste treatment, storage, or disposal facilities if a hazardous waste facility initiates a shipment of hazardous waste as provided in Parts 7045.0472 and 7045.0578 [40 C.F.R. Part 262].

39. Minn R. § 7045.0214 Subpart 1 [40 C.F.R. §§ 262.11(a) and (b)] states that any person who produces a waste within the State of Minnesota or any person who produces a waste outside the State of Minnesota that is managed within the State of Minnesota, must evaluate the waste to determine if it is hazardous within 60 days of initially generating the waste. The generation start date must be recorded and available for inspection. Waste that is not evaluated within 60 days of the generation start date must be managed as a hazardous waste and the person who produces the waste must be considered a generator until the waste is determined to be nonhazardous under Parts 7045.0214 to 7045.0218.

40. Minn R. § 7045.0214 Subpart 2 [40 C.F.R. §§ 262.11(c)(1) and (2)] states that the person evaluating the waste must determine if the waste meets any of the following criteria for a hazardous waste: A. the waste is listed in Part 7045.0135; or B. if the waste is not listed in Part 7045.0135, the person must then determine whether the waste is identified in Part 7045.0131 by either: (1) testing the waste according to the methods in Part 7045.0131 or according to an equivalent method approved by the commissioner pursuant to Part 7045.0075, Subpart 1; or (2) applying knowledge of the hazard characteristics of the waste in light of the materials or the processes used.

41. Between approximately January 10, 2005 and May 12, 2008, Respondent stored approximately 40 gallons of hazardous waste paint-related material, non-asbestos roofing sealers, ammonium hydroxide, and other waste materials in two containers without evaluating

the waste.

42. On or about May 13, 2008, Respondent opened the containers referenced in paragraphs 23 and 32 above and the contents were inventoried, sorted, repackaged and prepared for waste treatment.

43. On June 3, 2008, Respondent shipped its paint-related material as hazardous waste D001 for treatment, storage, disposal or incineration elsewhere.

44. On September 19, 2008, Respondent shipped its ammonium hydroxide and non-asbestos roofing sealers as hazardous waste D002 for treatment, storage, disposal or incineration elsewhere.

45. Respondent failed to evaluate the waste in the two containers referenced in paragraphs 23 and 32 above within 60 days of initially generating the waste to determine if it was hazardous or, alternatively, to manage the waste as hazardous.

46. Respondent's failure to evaluate the waste in the two containers referenced in paragraphs 23 and 32 above within 60 days of initially generating the waste to determine if it is hazardous or, alternatively, to manage the waste as hazardous, violated Minn R. § 7045.0214 Subparts 1, 2 and 3 [40 C.F.R. §§ 262.10(h) and 262.11(a), (b), (c)(1) and (2)].

Civil Penalty

47. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is fifteen thousand dollars (\$15,000). In determining the penalty amount, Complainant considered the facts and circumstances of this case with specific reference to U.S. EPA's 2003 RCRA Civil Penalty Policy and Respondent's cooperation and good faith efforts to comply.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the RCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must state the case name, the docket number of this CAFO and the billing document number.

49. A transmittal letter, stating the case name, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Daniel Chachakis (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

50. This civil penalty is not deductible for federal tax purposes.

51. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1).

Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

53. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

55. Respondent certifies that it is complying with its Permit and Minn R. § 7045.0214 Subparts 1, 2 and 3 [40 C.F.R. §§ 262.10(h) and 262.11(a), (b), (c)(1) and (2)].

56. The terms of this CAFO bind Respondent, its successors, and assigns.

57. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

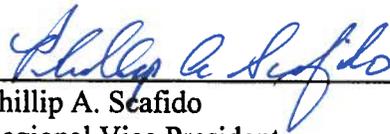
58. Each party agrees to bear its own costs and attorney's fees in this action.

59. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Univar USA, Inc.
Docket No.**

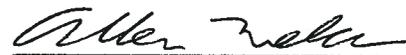
Univar USA, Inc., Respondent

SEPTEMBER 21, 2009
Date


Phillip A. Scafido
Regional Vice President
Univar USA, Inc.

United States Environmental Protection Agency, Complainant

September 24, 2009
Date


for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Univar USA, Inc.
Docket No. RCRA-05-2009-0021

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/24/09
Date

Walter W. Kowalski
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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SEP 28 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

CASE NAME: UNIVAR USA, INC, MN 0908615734
DOCKET NO: RCRA-05-2009-0021

CERTIFICATE OF SERVICE

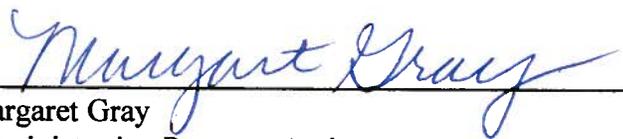
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Dwight Hammond
Regulatory Manager
Univar USA, Incorporated
8500 West 68th Street
Bedford Park, Illinois 60501

Certified Mail Receipt # 7001 0320 0005 8915 5374

Dated: Sept 28, 2009


Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency
Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590

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