

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

2011 SEP 21 PM 12:00

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

In the Matter of:	)	<b>Docket No. CAA112(r)-9-2011-0024</b>
	)	
	)	
<b>Univar USA Inc.</b>	)	
	)	
Respondent.	)	<b>CONSENT AGREEMENT AND FINAL ORDER PURSUANT TO 40 C.F.R. §§ 22.13 and 22.18</b>
	)	
	)	

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**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action initiated pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent, Univar USA Inc. (hereinafter, "Respondent"), is a corporation organized under the laws of the State of Washington.
2. Respondent owns or operates a chemical distribution facility, located at 2600 S. Garfield Ave., Commerce, CA 90040 ("Facility").
3. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations

**B. GENERAL ALLEGATIONS**

3. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 302(e) of CAA, 42 U.S.C. § 7602(e).
4. The Facility is a "stationary source" as defined by Section 112(r)(2)(C) of CAA, 42 U.S.C. § 7412(r)(2)(C). At all times relevant to this CA/FO, Respondent has been the

owner or operator of the “stationary source.”

5. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 CFR § 68.130.
6. Formaldehyde, Chemical Abstract Service Registry (“CAS”) Number 50-00-0, is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 15,000 pounds. 40 CFR § 68.130, Table 2.
7. At all times relevant to this CA/FO, Respondent has used or stored more than 15,000 pounds of formaldehyde.
8. Under Section 112(r)(7) of the CAA and 40 CFR § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan (“RMP”), as provided in 40 CFR §§ 68.150 - 68.185.
9. 40 C.F.R. § 68.25(a)(2)(i), promulgated pursuant to Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), requires the owner or operator of a stationary source to analyze and report in a Risk Management Plan (“RMP”) the worse-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of a regulated toxic substance from a covered process under worst-case conditions.
10. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR Part 68. Respondent neither admits nor denies this allegation.
11. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.
12. Section 113(d) of CAA, 42 U.S.C. § 7413, authorizes the EPA Administrator to assess civil penalties for any violation of Section 112 of the CAA, 42 U.S.C. § 7412.
13. 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 with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division as well as the Director of the Air Division. Regional Order 1265.05A, dated August 14, 2003.
14. In a letter dated June 21, 2011, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the

CAA, 42 U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATIONS

COUNT 1

(Failure to identify properly the worse-case release scenario)

15. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
16. From at least September 2006 until October 2010, Respondent's RMP included a worst-case release scenario based upon a container of cyclohexylamine with an off-site consequence of 1.5 miles.
17. At no time after September 2006 did Respondent store a container of cyclohexylamine with an off-site consequence of more than 0.6 miles.
18. From at least September 2006, the facility has stored at least one container of formaldehyde weighing from 480 to 507 pounds. The off-site consequence based on this size of container is 1.0 mile.
19. Respondent failed to base the worst-case scenario on the largest container of formaldehyde with an off-site consequence of 1.0 mile in the RMP.
20. Therefore, EPA alleges that Respondent failed to correctly identify the worse-case release scenario from September 2006 until October 2010, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and 40 CFR § 68.25.

D. CIVIL PENALTY

21. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after January 12, 2009. 69 Fed. Reg. 75340, 75346 (Dec. 11, 2008).
22. Based on the facts alleged herein and upon all the factors that the EPA considers pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the Combined Enforcement Policy for CAA Section 112(r) Risk Management Program ("CEP"), including the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other

factors as justice may require, EPA proposes that Respondent be assessed, and Respondent agrees to pay **ONE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$122,550)** in settlement of the civil penalty claims for the violations alleged herein. The proposed penalty was calculated in accordance with the CAA and the CEP.

#### E. ADMISSIONS AND WAIVERS

23. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 CFR Part 22. 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.
24. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.
25. 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 BOUND

26. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent until such time as the civil penalty required under Section D has been paid in accordance with Section H, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute a release and full settlement of the civil penalty claims for the violations alleged herein.
27. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
28. Until termination of this CA/FO, 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.

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

#### G. CERTIFICATION OF COMPLIANCE

30. Upon signing this CA/FO, Respondent certifies to EPA that, to the best of its knowledge, Respondent has fully complied with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), that formed the basis for the violation alleged in Section C above.
31. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

#### H. PAYMENT OF CIVIL PENALTY

32. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **ONE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$122,550)** in settlement of the violation set forth in Section C above. This Consent Agreement and Final Order constitutes a settlement of all claims for the violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.
33. 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 either the Regional Judicial Officer or Regional Administrator, is filed.
34. All payments shall indicate the name of the Facility, Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States." The check shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO and sent as follows:

Regular Mail

US Environmental Protection Agency  
U.S. EPA Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

UPS, FedEx, or Overnight Mail

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
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 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White (301-887-6548)  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment: This payment option can be accessed at:

<https://www.pay.gov/paygov>  
Enter "sf01.1" 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:

Mary Wesling  
Emergency Prevention & Preparedness Section (SFD-9-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and

Bryan Goodwin  
Regional Hearing Clerk (ORC-1)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

35. 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 CFR §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.
36. The civil 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

37. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. 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.
38. In addition to the interest and per annum penalties described in Paragraph 31, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Section I, Respondent agrees to pay EPA a stipulated penalty in the amount of up to FIVE THOUSAND DOLLARS (\$5,000) for each day the default continues.
39. 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 Paragraph 33 of this CA/FO.

40. 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 CFR §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 Agreement or with CERCLA and/or EPCRA and the implementing regulations.
41. 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.
42. 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 RIGHTS

43. EPA expressly reserves all rights and defenses that it may have.
44. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform legally required 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 Section 113 of the CAA, 42 U.S.C. § 7413.
45. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CAA, CERCLA, EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
46. 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 or federal laws and regulations.
47. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.
48. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of



this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS


- 49. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 50. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 51. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
- 52. Complainant and Respondent consent to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

- 53. In accordance with 40 CFR §§ 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 either the Regional Judicial Officer or Regional Administrator, is filed.

**IT IS SO AGREED.**

9/9/11  
Date

  
Leslie R. Schenck, VP & Associate General Counsel

Univar USA Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jane Diamond, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region IX

10/10/10

this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

**K. MISCELLANEOUS**

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- 50. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 51. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
- 52. Complainant and Respondent consent to entry of this CA/FO without further notice.

**L. EFFECTIVE DATE**

- 53. In accordance with 40 CFR §§ 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 either the Regional Judicial Officer or Regional Administrator, is filed.

**IT IS SO AGREED.**

9/9/11 \_\_\_\_\_  
Date Leslie R. Schenck, VP & Associate General Counsel

Univar USA Inc.

15 September 2011 \_\_\_\_\_  
Date For Jane Diamond, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region IX

**FINAL ORDER**

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CAA(112r)-09-2011-0024 ) be entered and that Respondent Univar USA, Inc. shall pay a civil penalty in the amount of **ONE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$122,550)** in accordance with the terms of this Consent Agreement and Final Order.

**THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING WITH THE HEARING CLERK.**

09/20/11  
Date

  
Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency,  
Region IX



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

**CERTIFIED MAIL NO.: 7000 1670 0009 3120 5566**  
**RETURN RECEIPT REQUESTED**

In Refer to: Univar USA, Inc., Commerce, CA

SEP 21 2011

George Martin  
District Operations Manager  
Univar USA, Inc.  
2600 South Garfield Avenue  
Commerce, CA 90040

Re: In the Matter of Univar USA, Inc., Commerce, CA


Dear Mr. Martin:

Enclosed are the two fully executed Consent Agreements and Final Orders ("CA/FOs") negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Univar USA, Inc. ("Univar").

These CA/FOs simultaneously commence and conclude the above-referenced proceeding concerning Univar's violations at their Commerce, California facility of Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(r)(7) of the Clean Air Act as alleged by EPA in the CA/FO.

Univar's prompt payment of the civil penalties assessed will close this case. If you have any questions regarding the CERCLA, EPCRA or CAA requirements governing operations at Univar or that concern the proceedings terminated by the enclosed documents, please contact Michael Hingerty at (415)972-3927.

Sincerely,

  
Jane Diamond  
Director  
Superfund Division

Enclosures

