

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED
2011 SEP 22 PM 4:00
REGIONAL ADMINISTRATIVE CENTER

In the Matter of:)	Docket Nos. EPCRA-09-2011-0014
)	CERCLA-09-2011-0004
)	
Univar USA Inc.)	
)	
Respondent.)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, 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. 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 312(d)(2)(C) of EPCRA, and the implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6 require any person in charge of a vessel or an offshore or onshore facility to notify immediately the National Response Center ("NRC") as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity ("RQ") during a 24-hour period.

4. Section 312(d)(2)(C) of EPCRA, 42 U.S.C. § 11022(d)(2)(C), and 40 C.F.R. § 370.42(i)(5) require an owner or operator of any facility, which is required to prepare or have available a material safety data sheet for a hazardous chemical pursuant to Section 11021 of EPCRA, to prepare and submit an emergency and hazardous chemical inventory form (“inventory form”), which must include an estimate of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

C. GENERAL ALLEGATIONS

5. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
6. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.
7. Section 325 of EPCRA, 42 U.S.C. § 11045, authorizes EPA to assess civil penalties for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
8. The Administrator of EPA delegated enforcement authority under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrators with EPA delegation 22-3-B, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.19.
9. Respondent operates a chemical distribution facility, located at 2600 So. Garfield Ave., Commerce, CA 90040 (the “Facility”).
10. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
11. The Facility is an “onshore facility” as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).
12. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
13. Xylene is designated as a “hazardous substance” in Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 CFR § 302.4, Table 302.4 and

Appendix A to Section 302.4. The RQ for xylene is 100 pounds.

14. Nitric acid is a hazardous chemical which requires a material safety data sheet, pursuant to Section 11021 of EPCRA.

D. ALLEGED VIOLATIONS

COUNT 1

(Failure to immediately notify the NRC)

15. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were set forth here in their entirety.
16. On April 13, 2010, approximately 250 gallons of CORTREAT, containing more than 500 pounds of xylene, leaked or was emitted into the environment from the Facility.
17. The leaking or emitting of xylene from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
18. Respondent had actual or constructive knowledge that the release exceeded the RQ at approximately 3:00 PM PST on April 13, 2010.
19. Respondent notified the NRC of the xylene release at approximately 4:30 PM PST on April 13, 2010.
20. Respondent's failure to immediately notify the NRC of the April 13, 2010 release from the Facility is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

COUNT 2

(Failure to report maximum amount of a hazardous chemical)

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.
22. Since on or about April 9, 2008, railcars containing approximately 689,000 pounds of nitric acid were at the facility.
23. Respondent did not include the quantity of nitric acid held in the railcars in its inventory form in March 2009 or March 2010.
24. Respondent modified and resubmitted the inventory forms for 2009 and 2010 on April 30, 2010, to properly report the amount of nitric acid in the railcars.

25. Respondent's failure to include the amount of nitric acid in the railcars in its inventory form is a violation of Section 312(d)(2)(C) of EPCRA, 42 U.S.C. 11022(d)(2)(C) and 40 C.F.R. 370.25(c), for 2009 and 2010.

E. CIVIL PENALTY

26. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), and Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to **THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500)** per day for each day a violation of CERCLA Section 103, 42 U.S.C. § 9603, and/or EPCRA Section 312, 42 U.S.C. § 11022 occurs on or after March 14, 2004. For violations that occur after January 12, 2009, a penalty of up to **THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500)** per day for each day is authorized. *See* Table 1 of 40 CFR § 19.4, 73 Fed. Reg. 75340, 75346 (Dec. 11, 2008).
27. Based on the facts alleged herein and upon all the factors that EPA considers pursuant to 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* ("EPCRA/CERCLA ERP") including the nature, extent, and gravity of the violations; Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit; and such other matters as justice may require, EPA proposes that Respondent be assessed a civil penalty as follows: **TEN THOUSAND SIX HUNDRED AND FORTY DOLLARS (\$10,600)** for the violation of Section 103 of CERCLA, and **THIRTY-ONE THOUSAND AND TWO HUNDRED DOLLARS (\$31,200)** for violations of Section 312 of EPCRA. The total proposed civil penalty is **FORTY-ONE THOUSAND AND EIGHT HUNDRED DOLLARS (\$41,800)** for the violations alleged herein.

F. ADMISSIONS AND WAIVERS

28. For 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 and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4 and 22.39. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO or 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.

29. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of 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 pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and/or Section 325 of EPCRA, 42 U.S.C. § 11045, 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.

G. PARTIES BOUND

30. 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 E has been paid in accordance with Section I, 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.
31. 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.
32. 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.
33. 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.

H. CERTIFICATION OF COMPLIANCE

34. 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), and EPCRA Section 312, 42 U.S.C. § 11022, that formed the basis for the violations alleged in Section D above.
35. 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.

I. PAYMENT OF CIVIL PENALTY

36. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **FORTY-ONE THOUSAND AND EIGHT HUNDRED DOLLARS (\$41,800)** in settlement of the civil penalty claims for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and EPCRA Section 312, 42 U.S.C. § 11022, set forth in Section D of this CA/FO.
37. 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.
38. 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
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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

5700 Rivertech Ct.
Riverdale, MD 20737
Contact – John Schmid (202-874-7026)
ABA = 051036706
CTX Transaction Code 22 – checking
Account 31006, Environmental Protection Agency

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

<https://www.pay.gov/paygov>

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

39. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the effective date of this CA/FO to avoid additional charges. If payment is not received within thirty

(30) calendar days, interest will accrue from the effective date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR §13.11(a). Additionally, administrative costs for collecting the overdue debt will be assessed monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any principal amount not paid within ninety (90) calendar days of the due date. See 40 CFR §13.11(b) and (c). Furthermore, Respondent will be liable for stipulated penalties as set forth below for any payment not received by its due date.

40. 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.

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

41. 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.
42. In addition to the interest and per annum penalties described in Paragraph 39, 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.
43. 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 38 of this CA/FO.
44. 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.
45. 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.
46. 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.

K. RESERVATION RIGHTS

47. EPA expressly reserves all rights and defenses that it may have.
48. 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 109 of CERCLA, 42 U.S.C. § 9609, and Section 312 of EPCRA, 42 U.S.C. § 11022.
49. 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 CERCLA, EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
50. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, tribal, state, or local law. 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.
51. 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 they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty shall resolve Respondent's liability for the violations and facts alleged herein.

L. OTHER CLAIMS

52. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or

contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

53. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
54. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
55. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

N. EFFECTIVE DATE

56. 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.

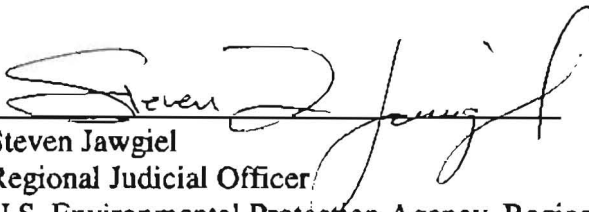
15 September 2011
Date


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 Nos. CERCLA-09-2011-00⁰⁴/_π and EPCRA-09-2011-0⁰¹⁴/_π) be entered, and that Respondent pay a civil penalty in the amount of **FORTY-ONE THOUSAND AND EIGHT HUNDRED DOLLARS (\$41,800)**, representing **TEN THOUSAND AND SIX HUNDRED DOLLARS (\$10,600)** for the violation of Section 103 of CERCLA, and **THIRTY-ONE THOUSAND AND TWO HUNDRED DOLLARS (\$31,200)** for violations of Section 312 of EPCRA.

09/22/11
Date


Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

Docket No. CAA(112r)-09-2011- 0024
and
Docket No. EPCRA-09-2011- 0014
Docket No. CERCLA-09-2011- 0004

I hereby certify that the original copy of the foregoing CAFOs with the Docket numbers referenced above, have been filed with the Region 9 Hearing Clerk and that copies were sent by certified mail, return receipt requested, to:

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


CERTIFIED MAIL NUMBER: 7010 1670 0009 3120 5566

Additional copies were hand-delivered to the following U.S. EPA case attorney:

Michael Hingerty, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

9/22/11



Bryan K. Goodwin

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



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 Reply 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,


JVD Jane Diamond
Director
Superfund Division

Enclosures