

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX



In the matter of:) U.S. EPA Docket No.
)
) RCRA 09-2022-0072
Univar Solutions USA Inc.,)
) Proceeding under Section 3008(a)
) of the Resource Conservation and
Respondent) Recovery Act, as amended,
_____) 42 U.S.C. Section 6928(a)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22 (“Consolidated Rules”).
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is Univar Solutions USA Inc. (“Univar”), the owner/operator of the facility located at 2600 Garfield Avenue, City of Commerce, California (“Commerce Facility”).
4. 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 state regulations adopted pursuant to the approved California hazardous waste management program.
5. 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 respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
7. The State of California (“State”) received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on August 1, 1992. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State has been authorized for all the hazardous waste management regulations referenced in this CA/FO.
8. A violation of California’s authorized hazardous waste program, found at Health & Safety Code §§ 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California’s authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

C. EPA’S GENERAL ALLEGATIONS

9. Respondent owns and operates the Commerce Facility.
10. On May 6, 2021, EPA conducted a compliance evaluation inspection at the Commerce Facility.
11. The Commerce Facility is a wholesale distributor of chemicals that supplies the food industry, chemical compounders, pharmaceuticals, oil and gas producers, electronics, and many other key industries with chemical raw materials and support services required to produce or refine products used in numerous end-use markets. The Commerce Facility also operates three tank farms containing aboveground storage tanks to store various products. The Commerce Facility is a large quantity generator of hazardous wastes with an EPA ID No. CAR 000 047 696.
12. The Commerce Facility distributes solvents for use in general and specialized industries. The Commerce Facility receives bulk solvents via railcars and tanker trucks that are subsequently loaded into tanks, tanker trucks, or into smaller containers for storage, processing, and or distribution to customers.

13. At all times relevant to this CAFO, Respondent operated the Commerce Facility subject to Chapter 6.5 of the California Health and Safety Code, and the regulations promulgated thereunder, commencing at Title 22, Division 4.5, §§ 66001 *et seq.*
14. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA alleges that Respondent violated California Health & Safety Code §§ 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
15. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
16. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the EPA signatory below.
17. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].¹
18. Respondent is the “owner” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
19. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
20. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
21. Respondent is or has been engaged in “treatment,” “storage,” or “disposal” of “hazardous waste” as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* 40 C.F.R. §§ 260.10 and 261.3].
22. At the Commerce Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R.

¹ All citations to the “C.C.R.” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

§§ 260.10 and 261.3]. These hazardous wastes include but are not limited to the following hazardous waste codes: D001, D035, F003, and F005.

D. ALLEGED VIOLATIONS

COUNT I
Failure to Perform a Waste Determination
(22 C.C.R. § 66262.11)

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 22 C.C.R. § 66262.11 requires that a person who generates a waste shall determine if that waste is a hazardous waste at the point of generation by methods set forth in subparagraphs (a) through (d), including listing as a hazardous waste, identification of any characteristics of hazardous waste, exclusions, or testing. [*See also* 40 C.F.R. § 262.11].
25. At all times relevant to this CA/FO, Respondent routinely flushed piping and hoses used to transfer solvents to or from tank trailers, railcars, tanks, and containers to prevent cross contamination. Respondent stored such flush in an aboveground storage tank TS-17 (“TS-17”), a stainless steel tank with a storage capacity of 3,000 gallons. Respondent sold certain quantities of the flush stored in TS-17 that met customer specifications (known as the “Liquifier”) to various customers to be used as solvent or emulsifier.
26. After EPA’s inspection, the EPA Inspector reviewed storage and disposal data for TS-17 at the Commerce Facility between 2017 and 2020.
27. EPA’s inspection and review of the Commerce Facility records indicated the Liquifier stored in TS-17 during 2019 and 2020 were tested and determined to be not saleable.
28. EPA’s inspection and review of the Commerce Facility records indicated that Respondent disposed of the Liquifier stored in TS-17 off-site as RCRA hazardous wastes carrying D001 (ignitibility), D035 (Methyl ethyl ketone (MEK) toxicity), F003 (spent non-halogenated solvents: acetone), and F005 (spent non-halogenated solvents: toluene, MEK and etc) codes during 2019 and 2020.
29. EPA’s inspection and review of the Commerce Facility records indicated that Respondent failed to perform a waste determination of the Liquifier before storing it in TS-17 during 2019 and 2020.
30. Therefore, EPA alleges that Respondent failed to perform a determination of waste at the point of generation, in violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT II

**Storage of Hazardous Waste without a Permit
(22 C.C.R. § 66270.1(c))**

31. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
32. Under 22 C.C.R. § 66270.1(c), a permit is required for the transfer, treatment, storage, and disposal of any hazardous waste.
33. EPA's inspection and review of the Commerce Facility records indicated that Respondent stored the Liquifier in TS-17 during 2019 and 2020 before disposing of it off-site as RCRA hazardous wastes carrying D001 (ignitibility), D035 (Methyl ethyl ketone (MEK) toxicity), F003 (spent non-halogenated solvents: acetone), and F005 (spent non-halogenated solvents: toluene, MEK and etc) codes.
34. Respondent failed to obtain any permit for storing the Liquifier in TS-17 during 2019 and 2020.
35. Therefore, EPA alleges that Respondent failed to obtain a permit for storage of hazardous waste, in violation of 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)]

COUNT III

**Failure to Determine Whether Equipment Contains or Contacts a Hazardous Waste
with Organic Concentration that Equals or Exceeds 10% by Weight
(22 C.C.R. § 66265.1063(d))**

36. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. 22 C.C.R. § 66265.1063(d) requires owners or operators of a facility to determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight. If the equipment contains or contacts a hazardous waste with organic concentration equaling or exceeding 10 percent by weight, it is subject to air emission standards for equipment leaks set forth at 40 C.F.R. Part 265, Subpart BB, as incorporated by the California regulations.
38. Based upon EPA's inspection and review of the Commerce Facility records, EPA determined that Respondent failed to determine whether TS-17 contained or contacted a hazardous waste with organic concentration that equals or exceeds 10 percent by weight during 2019 and 2020.

39. Therefore, EPA alleges that Respondent failed to determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight during 2019 and 2020, in violation of 22 C.C.R. § 66265.1063(d) [*see also* 40 C.F.R. § 265.1063(d)].

COUNT IV
**Failure to Determine Average Volatile Organic Concentration of
a Hazardous Waste (22 C.C.R. § 66265.1084)**

40. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
41. 22 C.C.R. § 66265.1084 requires owners or operators of hazardous tank systems to determine the average volatile organic concentration of a hazardous waste at the point of waste generation and before its introduction into such tank systems. [*see also* 40 C.F.R. § 265.1084]. The measured average volatile organic concentration of a hazardous waste determines the applicability of air emission standards for tanks, surface impoundments, and containers storing hazardous waste set forth at 40 C.F.R. Part 265, Subpart CC, as incorporated by the California regulations.
42. Based upon EPA's inspection and review of the Commerce Facility records, EPA determined that Respondent failed to determine the average volatile organic concentration of the Liquifier before storing it in TS-17 during 2019 and 2020.
43. Therefore, EPA alleges that Respondent failed to determine the average volatile organic concentration of a hazardous waste before its introduction into a hazardous waste tank system, in violation of 22 C.C.R. § 66265.1084 [*see also* 40 C.F.R. § 265.1084].

E. CIVIL PENALTY

44. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS (\$134,386) as the civil penalty for the violations alleged herein.
45. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the following: the seriousness of the violation and any good faith efforts to comply with applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's "June 2003 RCRA Civil Penalty Policy," and adjusted for inflation in accordance with the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

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

G. PARTIES BOUND

47. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section E has been paid in accordance with Section H. When that matter is concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.
48. No change in ownership relating to the Commerce Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
49. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute it and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

50. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS (\$134,386) in full settlement of the federal civil penalty claims set forth in this CA/FO.
51. Respondent shall submit payment of ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS (\$134,386) within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

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

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

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

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

52. At the time payment is made, Respondent shall send a PDF copy of the notification that the payment has been made by one of the methods listed above including proof of the date payment was made, to the following email addresses:

Regional Hearing Clerk

U.S. Environmental Protection Agency - Region 9

R9HearingClerk@epa.gov

And to:

Sharon Lin

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency - Region 9

Lin.Sharon@epa.gov

53. Each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, 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 C.F.R. § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
54. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

55. In the event Respondent fails to submit a payment to EPA by the time required in this CA/FO, Respondent shall pay stipulated penalties up to: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) 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.

56. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt by Respondent of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
57. All penalties shall be made payable to "Treasurer of the United States" and shall be remitted as described in Paragraph 51.
58. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
59. 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. CERTIFICATION OF COMPLIANCE

60. By executing this CA/FO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with 22 C.C.R. §§ 66262.11, 66270.1(c), 66265.1063(d), and 66265.1084 that formed the basis for the violations alleged in Section D, above.

K. RESERVATION OF RIGHTS

61. 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 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 3008 of RCRA, 42 U.S.C. § 6928. 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 RCRA, or any other statutory, regulatory or common law enforcement authority of the United States. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

62. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
63. 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 alleged violations and facts as set forth in Section D of this CA/FO.
64. 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 required local, State or federal permits.

L. OTHER CLAIMS

65. 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

66. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
67. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
68. Each party to this action shall bear its own costs and attorneys' fees.
69. EPA and Respondent consent to entry of this CA/FO without further notice.

N. EFFECTIVE DATE

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

IT IS SO AGREED.

In the Matter of Univar Solutions USA Inc.,
Consent Agreement and Final Order

FOR RESPONDENT UNIVAR SOLUTIONS USA INC.:




Katie Birge
Director Environmental Compliance

08/25/2022

Date

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

**AMY MILLER-
BOWEN**



Digitally signed by AMY MILLER-
BOWEN
Date: 2022.09.08 12:40:58 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

In the Matter of Univar Solutions USA Inc.,
Consent Agreement and Final Order

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA 09-2022-0072) be entered and that Respondent shall pay a civil penalty of ONE HUNDRED THIRTY-FOUR THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS (\$134,386), and comply with the terms of this CA/FO.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA – Region 9

Date

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Univar Solutions USA, Inc. (Docket No. RCRA-09-2022-0072) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

RESPONDENT:

(Via Electronic Mail)

Chris Betancourt
Branch Operations Manager II
Univar Solutions USA, Inc.
2600 South Garfield Ave
Commerce, CA 90040
Chris.Betancourt@Univarsolutions.com

COMPLAINANT:

(Via Electronic Mail)

David Kim
Assistant Regional Counsel (ORC-3)
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105
Kim.David@epa.gov

Ponly J. Tu Date
Regional Hearing Clerk
U.S. EPA, Region IX