

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA. PA

In the Matter of:)	EPA Docket No. CAA-03-2013-0042
Univar USA, Inc.)	
17425 Northeast Union Hill Road)	
Redmond, Washington 98052,)	Proceedings Pursuant to Sections 112(r)
)	and 113 of the Clean Air Act,
Respondent.)	42 U.S.C. §§ 7412(r) and 7413
)	
Univar USA, Inc.)	
1001 Old Bermuda Hundred Road)	
Chester, Virginia 23836,)	
)	
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).

2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).

3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.

4. With the exception of Paragraph 3, above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

EPA'S FINDINGS OF FACT

5. Respondent, Univar USA, Inc. is a corporation organized in the State of Washington with its principal place of business located at 17425 Northeast Union Hill Road in Redmond, Washington.

6. At all times relevant to this Consent Agreement, Respondent has been the owner and/or operator of a chemical distribution facility located at 1001 Old Bermuda Hundred Road in Chester, Chesterfield County, Virginia (the "Facility").

7. On October 4, 2011, EPA conducted an inspection of the Facility to ensure compliance with Section 112(r)(1) and (7) of the CAA, 42 U.S.C. § 7412(r)(1) and (7).

8. On February 16, 2012, EPA sent a post-inspection letter containing a follow-up question from the inspection to Respondent to obtain information relevant to compliance at the Facility with Section 112(r)(1) of the CAA.

9. On March 13, 2012, Respondent discussed with EPA the status of its compliance with chemical storage requirements at the Facility and at its other facilities located within Region III with EPA, and supplied information in response to the information request on April 2, 2012 and on June 15, 2012.

EPA'S FINDINGS OF FACT RELATED TO THE VIOLATIONS OF SECTION 112(r)(1) OF THE CLEAN AIR ACT

10. The findings of fact contained in Paragraphs 5 through 9 of this CA/FO are incorporated by reference herein as though fully set forth at length.

11. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

12. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely

hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) is hereinafter referred to herein as the “General Duty Clause.”

13. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances. An extremely hazardous substance is any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility or corrosivity. Senate Comm. of Environment and Public Works, Clean Air Act Amendments of 1989, Senate Rep. No. 228, 101st Cong., 1st Sess. 211 (1989). Extremely hazardous substances include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published under EPCRA at 40 C.F.R. Part 355, Appendices A and B. *Id.*

14. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

16. The Facility handles and stores nitric acid (Chemical Abstract Services (“CAS”) Number 7697-37-2), sulfuric acid (CAS No. 7664-93-9), and hydrochloric acid (CAS No. 7647-01-0), all of which are extremely hazardous substances pursuant to Section 112(r)(1) of the CAA.

17. Complainant determined, based on its review of information obtained from Respondent pertaining to the Facility, that Respondent failed to satisfy the requirements of the General Duty Clause with respect to the storage and handling of its extremely hazardous substances by failing to design and maintain a safe facility in accordance with industry codes and standards. Specifically, Respondent failed to comply with the General Duty Clause as follows:

- a. Respondent failed to provide proper storage of incompatible hazardous substances. Respondent did not store hazardous chemicals in a way that would prevent the hazardous effects of foreseeable inadvertent mixing of different materials. Respondent stored acids and bases outside and adjacent to each other, with less than one-foot of separation and without any partition or secondary containment. In addition, Respondent failed to provide adequate separation

distances for its extremely hazardous substances: nitric acid, sulfuric acid, and hydrochloric acid. More specifically, Respondent stored nitric acid six feet from ammonium hydroxide; sulfuric acid next to ammonium hydroxide, hydrochloric acid, and caustic potash; and hydrochloric acid less than two feet from formic acid and caustic soda. Respondent did not (1) segregate incompatible materials in storage by at least 20 feet, (2) isolate incompatible materials in storage by a noncombustible partition extending at least 18 inches above and to the sides of the stored material, or (3) use hazardous material storage cabinets in accordance with the International Fire Code, Chapter 27, Paragraph 2703.9.8 (2006), or otherwise store incompatible materials consistent with applicable standards; and

- b. Respondent failed to provide training and written procedures on the chemical nature of and the hazards posed by the extremely hazardous substances and the appropriate mitigating actions necessary in the event of fire, leak, or spill for persons responsible for operation of areas in which extremely hazardous substances are stored, dispensed, handled, or used in accordance with the International Fire Code, Chapter 27, Paragraph 2703.9.1 (2006). Respondent's failure to provide adequate training allowed incompatible materials to be improperly stored.

18. On November 6, 2012, Respondent submitted information to EPA regarding physical changes to its warehouse, including the installation of barriers, and changes to its storage procedures. Respondent supplemented these submissions on December 5, 2012. EPA determined that Respondent's physical and procedural revisions were acceptable and consistent with the International Fire Code.

**EPA'S CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

19. The findings of fact contained in Paragraphs 5 through 18 of this CA/FO are incorporated by reference herein as though fully set forth at length.

20. Nitric acid, sulfuric acid, and hydrochloric acid are extremely hazardous substances for purposes of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

21. At all times relevant to this Consent Agreement, nitric acid, sulfuric acid, and hydrochloric acid have been present at the Facility.

22. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. At all times relevant to this Consent Agreement, Respondent has been the owner and/or operator of a "stationary source," as the term is defined at 42 U.S.C. § 7412(r)(2)(C).

24. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 40 U.S.C. § 7412(r)(1), because it is the owner and/or operator of a stationary source.

25. Respondent has violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to design and maintain a safe facility. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

26. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as set forth above, in the amount of **\$3,600**.

27. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

PAYMENT TERMS

28. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$3,600 no later than **thirty (30) days** after the effective date of the Final Order by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action, *i.e.*, CAA-03-2013-0042;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL

St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

29. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

30. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012).

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges, including interest beyond that required by this CA/FO, penalties and/or administrative costs of handling delinquent debts.

32. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

33. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

34. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

35. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

36. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

37. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

38. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

39. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

40. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) or any regulations promulgated thereunder.

41. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

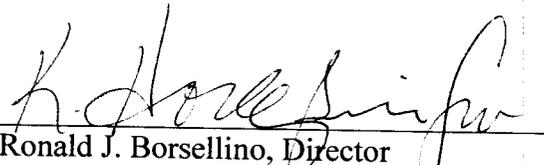
42. Each party to this action shall bear its own costs and attorney's fees.

FOR UNIVAR USA, INC.

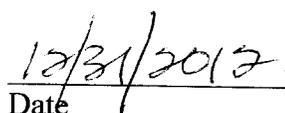
Shawn Carter Lilley
Shawn Carter Lilley
Vice President,
Global Environmental Health & Safety

12/17/12
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:)
Univar USA, Inc.)
17425 Northeast Union Hill Road)
Redmond, Washington 98052,)
Respondent.)
Univar USA, Inc.)
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EPA Docket No. CAA-03-2013-0042

Proceedings Pursuant to Sections 112(r)
and 113 of the Clean Air Act,
42 U.S.C. §§ 7412(r) and 7413

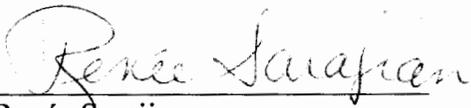
FINAL ORDER

Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date: 1/15/13


Renée Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
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42 U.S.C. §§ 7412(r) and 7413

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Laura K. McAfee, Esquire
Beveridge & Diamond, P.C.
201 N. Charles St., Suite 2210
Baltimore, MD 21201

JAN 16 2013

Date


Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel