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U.S. EPA REGION IX
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1 NANCY J. MARVEL
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. FIFRA-09-2011-2024
11)
12 Univar USA Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency ("EPA"), Region IX, and Univar
17 USA Inc. (the "Respondent") agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order ("CAFO").
19

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
22 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), for the assessment
23 of a civil administrative penalty against Respondent for the production of a pesticide in an
24 unregistered establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §
25 136j(a)(2)(L).

26 2. Complainant is the Associate Director for Agriculture of the Communities and
27 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional
28 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation
Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further

1 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture
2 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,
3 dated June 9, 2005.

4 3. Respondent is Univar USA Inc., an active corporation whose headquarters is located
5 in Redmond, Washington. Univar USA Inc. is the successor in interest for the obligations and
6 liabilities of Basic Chemical Solutions, LLC ("BCS").

7 **B. STATUTORY AND REGULATORY BASIS**

8 4. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any
9 person who is a producer to violate any of the provisions of Section 7.

10 5. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce a
11 pesticide subject to FIFRA in any State unless the establishment in which it is produced is
12 registered with the EPA.

13 **C. ALLEGED VIOLATION**

14 6. Respondent is a corporation and therefore fits within the definition of "person" as that
15 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16 7. "BCS Sodium Hypochlorite Solution (12.5%)" (EPA Registration No. 70567-2) is a
17 substance intended for preventing, destroying, repelling, or mitigating any pest and is therefore a
18 "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

19 8. In calendar year 2010, BCS manufactured the registered pesticide "BCS Sodium
20 Hypochlorite Solution (12.5%)" at a facility located at 3514 Fairfield Road in Baltimore,
21 Maryland (the "Maryland Facility") (and subsequently submitted to EPA in February 2011 a
22 Pesticide Production Report admitting such manufacture) and is therefore a "producer" as that
23 term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

24 9. At all times relevant to this CAFO, BCS, by manufacturing "BCS Sodium
25 Hypochlorite Solution (12.5%)" at the Maryland Facility, operated a pesticide-producing facility
26 that is an "establishment" as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

1 On Line Payment:

2 This payment option can be accessed from the information below:

3 www.pay.gov

4 Enter "sfo1.1" in the search field

5 Open form and complete required fields

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

8 A copy of each check, or notification that the payment has been made by one of the other
9 methods listed above, including proof of the date payment was made, shall be sent with a
10 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
11 following addresses:

12 Regional Hearing Clerk
13 Office of Regional Counsel (ORC-1)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Glenda Dugan
18 Communities and Ecosystems Division (CED-5)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 Edgar P. Coral
23 Office of Regional Counsel (ORC-2)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 17. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
28 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
29 use such payment as a tax deduction.

30 18. If Respondent fails to pay the assessed civil administrative penalty of SIX
31 THOUSAND, FOUR HUNDRED DOLLARS (\$6,400), as identified in Paragraph 15, by the
32 deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA
33 upon EPA's written request. The amount of the stipulated penalty will be SEVEN HUNDRED
34 AND FIFTY DOLLARS (\$750), and will be immediately due and payable upon EPA's written
35 request on the day following the deadline specified in Paragraph 15, together with the initially

1 assessed civil administrative penalty of SIX THOUSAND, FOUR HUNDRED DOLLARS
2 (\$6,400), resulting in a total penalty due of SEVEN THOUSAND, ONE HUNDRED AND
3 FIFTY DOLLARS (\$7,150). Failure to pay the civil administrative penalty specified in
4 Paragraph 15 by the deadline specified in that Paragraph may also lead to any or all of the
5 following actions:

6 (1) EPA may refer the debt to a credit reporting agency, a collection
7 agency, or to the Department of Justice for filing of a collection action in the appropriate United
8 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
9 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
10 collection proceeding.

11 (2) The U.S. Government may collect the debt by administrative offset
12 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
13 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
14 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
15 C.F.R. §§ 13(C) and 13(H).

16 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
17 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
18 business with EPA or engaging in programs EPA sponsors or funds.

19 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
20 Government may assess interest, administrative handling charges, and nonpayment penalties
21 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
22 civil administrative penalty specified in Paragraph 15 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
24 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

1 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
2 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
3 either actual or average cost incurred (including both direct and indirect costs), for every month
4 in which any portion of the assessed penalty is more than thirty (30) days past due.

5 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
6 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
7 may be assessed on all debts more than ninety (90) days delinquent.

8 F. CERTIFICATION OF COMPLIANCE

9 19. In executing this CAFO, Respondent certifies that (1) to the best of its knowledge, no
10 legacy BCS facility is producing any pesticide in an unregistered establishment in violation of
11 Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and (2) it is currently in compliance with
12 all other FIFRA requirements for all its ongoing operations.

13 G. RETENTION OF RIGHTS

14 20. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
15 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
16 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
17 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
18 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
19 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
20 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
21 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

22 21. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
23 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
24 and permits.

1 H. ATTORNEYS' FEES AND COSTS

2 22. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
3 this proceeding.

4 I. EFFECTIVE DATE

5 23. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
6 effective on the date that the Final Order contained in this CAFO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

8 J. BINDING EFFECT

9 24. The undersigned representative of Complainant and the undersigned representative of
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
11 of this CAFO and to bind the party he or she represents to this CAFO.

12 25. The provisions of this CAFO shall apply to and be binding upon Respondent and its
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
14 and assigns.

15
16 FOR RESPONDENT UNIVAR USA INC.:

17 9/12/11
18 DATE



19 LESLIE R. SCHENCK
20 Vice President - Associate General Counsel
Univar USA Inc.
17425 NE Union Hill Road
Redmond, WA 98052

21
22 FOR COMPLAINANT EPA:

23 9/28/11
24 DATE



25 KATHERINE A. TAYLOR
26 Associate Director for Agriculture
Communities and Ecosystems Division
27 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Univar USA Inc. having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-0024) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of SIX
5 THOUSAND, FOUR HUNDRED DOLLARS (\$6,400), and comply with the terms and
6 conditions set forth in the Consent Agreement.

7
8
9 09/29/11
DATE

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STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2011-00 24) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Ms. Leslie R. Schenck
Vice President – Associate General Counsel
Univar USA Inc.
17425 NE Union Hill Road
Redmond, WA 98052

CERTIFIED MAIL NUMBER: 7007-0710-0003-6240-3145

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/29/11
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date: SEP 29 2011

Ms. Leslie R. Schenck
Vice President – Associate General Counsel
Univar USA Inc.
17425 NE Union Hill Road
Redmond, WA 98052

Subject: Univar USA Inc.
Consent Agreement and Final Order
Docket No. FIFRA-09-2011- 0024

Dear Ms. Schenck:

Enclosed please find the Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq. for the above referenced case. The terms of the CAFO require the payment to be received within 30 days of the effective date (filing date) of the CAFO. Directions for sending payment can be found in paragraph 16 (pages 3-5) of the CAFO. Offices to which copies must be sent can be found on pages 4 and 5.

If you have any questions you may contact Edgar Coral, Esquire, Office of Regional Counsel, telephone number 415-972-3898 or Glenda Dugan, Enforcement Officer, telephone number, 415- 947-4204 at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Taylor".

Katherine Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Cc: Edgar Coral, Esquire, Office of Regional Counsel