



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SEP 15 2010

LU-9J

CERTIFIED MAIL: 7001 0320 0006 0192 5060
RETURN RECEIPT REQUESTED

Mindy Boehr
Barnes & Thornburg
11 South Meridan Street, Suite 1313
Indianapolis, Indiana 46209-6406

Re: Univar USA, Inc. South Bend, Indiana
Administrative Order on Consent,
Docket No. **RCRA-05-2010-0022**

Dear Ms. Boehr:

Enclosed is a signed original of the Administrative Order on Consent (AOC) between Univar USA, Inc. and the United States Environmental Protection Agency. The public comment period ended on September 2, 2010. EPA received no comments. The Order became effective on September 15, 2010, the date that Mr. Sypniewski signed the AOC for EPA. If you have any questions regarding this matter, please do not hesitate to contact Gaylene Vasaturo at 312-886-1811. Thanks for your and John Kyle's cooperation on this matter.

Sincerely,

A handwritten signature in black ink that reads "Jose Cisneros".

Jose Cisneros
Chief
Remediation and Reuse Branch

Enclosure

cc: Gary Tonry w/o enclosure
VP Operations
Univar USA Inc
17425 NE Union Hill Rd.
Redmond, WA 98052

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)

Univar USA Inc.)
South Bend, Indiana)

RESPONDENT)
)

Proceeding under Section 7003 of)
the Resource Conservation and)
Recovery Act, 42 U.S.C. Section)
6901, et seq., as amended.)
_____)

EPA DOCKET NO. RCRA-05-2010-0022
RCRA 7003 -

RECEIVED
SEP 15 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Respondent, Univar USA Inc. ("Univar"). This Order provides for the performance of corrective action by Univar in connection with the property located at 59865 Market Street, South Bend, Indiana (the "Facility"). In entering into this Order, the mutual objectives of EPA and Univar are to remedy and/or prevent the potential endangerment to human health and/or the environment from activities involving hazardous wastes, and to ensure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. These mutual objectives are described in Section IX Work to be Performed. Univar shall finance and perform the Work in accordance with this Order, plans, standards, specifications and schedules set forth in this Order or developed by Univar and approved by EPA pursuant to this Order.
2. EPA has determined that Univar or its predecessor has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of hazardous wastes that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of Indiana of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. §6973(a), on July 7, 2010.
4. EPA and Univar acknowledge that this Order has been negotiated by the parties in good faith and that this Order is fair, reasonable, and in the public interest.

II. JURISDICTION

5. This Order is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, 42 U.S.C. § 6973, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to Division Director Land and Chemicals Division of EPA Region 5 by Delegation No. 8-22-C.
6. Univar agrees not to contest EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order, and agrees not to contest the validity of this Order or its terms or conditions.
7. Univar agrees to undertake and complete all actions required by the terms and conditions of this Order.

III. PARTIES BOUND

8. This Order shall apply to and be binding upon EPA, and on Univar and Univar's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Univar, as well as upon subsequent purchasers of the Univar Facility located in South Bend, Indiana. Any change in ownership or corporate status of Univar including, but not limited to, any transfer of assets or real or personal property shall not alter Univar's responsibilities under this Order.
9. Univar shall provide a copy of this Order to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Facility is transferred. Univar shall be responsible for and liable for completing all of the activities required pursuant to this Order, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Univar. Univar shall provide a copy of this Order within seven (7) days of the Effective Date of this Order, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the work performed pursuant to this Order. Univar shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this Order, on compliance with the terms of this Order. Univar shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this Order.

IV. DEFINITIONS

10. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901-6922k, and the regulations promulgated under RCRA, unless otherwise specified.

V. FINDINGS OF FACT

11. Univar is the owner and operator of the Facility located at 59865 Market Street, South Bend, Indiana.
12. Univar was previously known as Vopak USA Inc. (Vopak). In November 2002, Vopak USA Inc. changed its name to Univar USA Inc. Prior to April 2001, Vopak was known as Van Waters & Rogers, Inc., a subsidiary of Univar Corporation. Prior to Univar's purchase of the property in 1977, Inland Chemical Company owned the property and operated a chemical distribution facility at the property beginning in 1956. Prior to Inland's ownership, the property was undeveloped agricultural land.
13. Univar is a distributor of chemicals for a variety of industries. The most commonly managed chemicals include acids, bases, and organic solvents. Historically, these chemicals were delivered to the Facility in tanker trucks, transferred to above-ground storage tanks, repackaged and shipped in containers to customers. Containers of off-specification industrial chemicals (generated on-site or received from other facilities) were stored at two designated locations at the Facility. Univar managed these hazardous wastes, pursuant to a RCRA permit administered by the State of Indiana. The facility was closed for business in March 2010.
14. In 1993, EPA modified Univar's federal RCRA permit to add corrective action requirements concerning the release of industrial chlorinated solvents (chlorinated volatile organic compounds or VOCs) which were detected in the soil around the Facility and in the ground water beneath and to the north and west of the Facility.
15. The Facility is located in an unincorporated area southwest of South Bend, Indiana. There is a residential area and an agricultural area to the north and west of the Facility. See Attachment 1, Map of Facility and surrounding area. Sampling results in 1995 showed that many of the wells in the residential area had VOCs above the Maximum Contaminant levels (MCLs). The compounds detected included Trichloroethene (TCE), cis-1,2-Dichloroethene (cis-1,2-DCE), Vinyl Chloride, 1,1,1-Trichloroethane (1,1,1-TCA), trans-1,2 Dichloroethene (trans-1,2-DCE), 1,1- Dichloroethene (1,1-DCE). The Indiana State Department of Health issued a report in 1995, concluding that sensitive populations in the residential area were exposed to industrial chlorinated solvents that could pose a health risk through dermal exposure, inhalation and oral ingestion.
16. The groundwater contamination at the Facility resulted from past practices of handling hazardous wastes at the Facility, in particular the handling of industrial chlorinated solvents. Based upon information which was provided by former employees of Inland Chemical Company and Van Waters & Rogers, U.S. EPA identified areas within the Facility grounds where industrial chemicals and/or hazardous wastes or their chemical constituents were released.
17. In 1995, Univar installed a soil vapor extraction system on the Facility property to remove VOC contamination from soil and groundwater within the source area. Over a

ten year period of operation, the soil vapor extraction system substantially reduced VOC concentrations in the groundwater beneath the Facility.

18. In 1996, Univar and other responsible parties constructed a water main to hook up the Facility, the industrial area north of the Univar Facility and the residential area north and northwest of the Facility. A condition for connecting to the City of South Bend water supply was the abandonment of all water supply wells on the properties being connected to the water main. All but ten property owners contacted at that time agreed to and were hooked up to the City of South Bend water supply.
19. From 1993 to 1999, Univar conducted a RCRA Facility Investigation (RFI) in order to determine the extent of groundwater contamination in the area of the Facility. The RFI Report listed the contaminants detected as tetrachloroethene (PCE), TCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, vinyl chloride, acetone and toluene. The RFI found that biodegradation of PCE and 1,1,1-TCA was occurring beneath the Facility and downgradient from the Facility, and identified the chemical degradation sequence.
20. On November 15, 2002, IDEM notified Univar that Univar had completed total closure of its RCRA-regulated container storage units at the Facility as required by 40 C.F.R. Part 264 Subpart G.
21. On May 30, 2003, EPA approved Univar's RFI and notified Univar that, pursuant to its federal RCRA permit, it must submit a work plan for a Corrective Measures Study (CMS). The CMS included provisions for completing a Baseline Risk Assessment followed by an evaluation of remedial alternatives and selection of remedy. EPA approved the work plan on August 20, 2003. On June 18, 2004, Univar submitted a draft CMS report and on September 30, 2004, Univar submitted its Response to EPA's comments on the CMS Report. In its Response Univar proposed a pilot test of an off-site treatment system designed to reduce the concentrations of contaminants in the groundwater, in particular those contaminants identified in the Baseline Risk Assessment as posing a potential risk to human health and the environment. On October 6, 2004, EPA granted Univar permission to construct the system and conduct the test.
22. On July 31, 2003, Univar submitted the final (Revision 3) Baseline Risk Assessment to the EPA. The Risk Assessment evaluated potential risk to human health and the environment associated with exposure to constituents in environmental media at the Facility. The Risk Assessment divided the area affected by VOCs in soil and groundwater originating from the Univar facility into three study areas based on land use. Area 1 included the Univar Facility; Area 2 included the industrial area immediately north of the Facility bounded by the Facility on the south and Ireland Road/State Rt. 23 to the north; and Area 3 included the residential area north of Ireland Road/State Rt. 23. The Risk Assessment identified Contaminants of Concern (COC), completed exposure pathways, and preliminary target remedial goals for COCs for Area 3 that resulted in risks above the EPA acceptable guidelines.

Univar's Baseline Risk Assessment determined that there are currently no unacceptable risks to human health and the environment associated with the COCs at the Facility (Area 1) based on assumptions that no one will use the groundwater in the contaminated zone, that the Facility remains industrial, and that the structures and pavement on the Facility remain in place and are maintained. The only potential exposure pathway that results in risk levels that exceed the EPA acceptable guidelines is use of groundwater.

23. On May 1, 2006, Univar began operation of a pilot system, which is located along Ireland Road to the north of the Facility, for the extraction, treatment and injection of contaminated ground water (the "Pilot System"). The pilot system operates as an enhanced anaerobic dechlorination (EAD) system. On August 30, 2007, Univar submitted a final report on the pilot study and the pilot system's effectiveness in the reduction of groundwater contaminant concentrations. Univar determined that operation of the pilot system EAD reduced the concentrations of cis-1,2 DCE and 1,1-DCE to below MCLs in wells VMW-27 and IMW-7D, which are just north of the Pilot System.
24. Current groundwater monitoring data shows that MCLs for the following contaminants are exceeded in the groundwater beyond the Facility boundaries: cis 1,2-dichloroethene (cis 1,2-DCE), 1,1-dichloroethene (1,1-DCE), 1,2-dichloroethane (1,2-DCA), vinyl chloride, tetrachloroethene (PCE) and trichloroethene (TCE); and that MCLs are exceeded for the following three contaminants in the groundwater beneath the Facility property: PCE, TCE and vinyl chloride.
25. St. Joseph County adopted Ordinance No. 38-05 entitled, "Well Drilling and Water Supply Systems Ordinance." This Ordinance provides for the establishment of "Administrative Control Areas" to control the installation and use of wells in and near areas of known, suspected, or potential contamination in the soil or groundwater. Sec. 24.20.150. Pursuant to this Ordinance, in 2007 the St. Joseph County Health Department (SJCHD) established the Mayflower Road Administrative Control Area (ACA) which covers the groundwater present in areas that could be impacted by the Facility. The boundaries of the ACA encompass the ground water which has been impacted by the Univar facility (the zone of contamination), along with a surrounding buffer zone. Pursuant to this action, the SJCHD will not allow the installation of any new water supply wells in the zone of contamination with the exception of environmental monitoring wells. In 2008, the Health Department conducted a survey of the ACA finding that there are 109 parcels in the ACA without a connection to the City drinking water supply. Fifty-eight of the parcels are vacant, the others use private wells for their drinking water supply. However, only one parcel containing a residential water well was identified within the zone of contamination as depicted by SJCHD. While the parcel was within the zone of contamination, the water well itself is over 750 feet east of the zone boundary.
26. On April 30, 2008, Univar submitted a final CMS which evaluated several remedial technologies and actions, and proposed final corrective measures to protect human health and the environment from current and future unacceptable risks due to the release of hazardous waste. Based on the successful results of the Pilot System EAD, Univar

proposed expanding the EAD system east along Ireland Road as part of the final corrective measures set out in the final CMS.

27. In April 2009, Univar installed additional shallow and deep monitoring wells in the Cloyd Street area to replace former monitoring well IMW-11 and to help delineate the plume. About the same time Univar installed additional SVE wells on the lot north of its facility to help speed up reduction of the VOC concentrations near the source area.
28. On August 6, 2009, EPA issued a Statement of Basis proposing corrective measures for Univar. The Statement of Basis included a detailed description and justification for the proposals and provided the public with a 60 day opportunity to review and comment upon the proposed final Corrective Measures. Comments were received from Univar.
29. The expanded Ireland Road EAD segment became operational in February 2009. Univar also installed an EAD Segment on the Univar property and on lot just north of the Univar facility (the Univar EAD segment) which became operational in November 2009
30. On March 12, 2010, EPA issued the Final Decision selecting final corrective measures to be implemented by Univar. The corrective measures include operation of the Ireland Road and Univar EAD systems until MCLs for the VOC contaminants in certain specified wells have been met for eight quarters, operation of a soil vapor extraction system as long as Univar can remove at least 0.1 pound VOCs per 24 hour day operating at 300 scfm (or equivalent), and, after shutdown of the EAD systems, monitoring for natural attenuation in Area 3. The Final Decision also sets out institutional controls and a long-term monitoring plan.

VI. CONCLUSIONS OF LAW

31. Based on the Findings of Fact set forth above, and an administrative record supporting this Order, EPA has determined that:
 - A. Respondent is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(a).
 - B. Chlorinated industrial solvents released into the soil and groundwater at the Facility are “solid wastes” as defined in Section 1004(27) of RCRA, 42 U.S.C. §6903(27). Such solid wastes are also “hazardous wastes” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) because their concentration and chemical characteristics may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
 - C. Respondent handled and stored chlorinated industrial solvents at its Facility and failed to prevent their release to the environment.

D. Imminent and Substantial Endangerment. The past management of the chlorinated industrial solvents at Respondent's Facility may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). There is a potential risk of a small business using or consuming the contaminated groundwater, and of residents and small businesses using or consuming the contaminated groundwater in the future. In addition, without institutional controls at the Facility, there is a potential risk of the Facility property being used for something other than an industrial purpose in the future and a risk of wells being installed on the Facility property.

E. The actions required by this Order may be necessary to protect human health and the environment because the work to be performed under this Order will require completion of corrective action to address the ground water contamination and will require that appropriate institutional controls be implemented.

VII. ORDER ON CONSENT

32. Based upon the administrative record and the Findings of Fact (Section V) and Conclusions of Law (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. Respondent shall comply with all provisions of this Order.

VIII. PROJECT MANAGER

33. EPA and Univar must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

IX. WORK TO BE PERFORMED

34. Univar must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to EPA Region 5's March 2000 "Use of Institutional Controls in the RCRA Corrective Action Program," and relevant portions of EPA Region 5's 2004 "Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action" (EPA530-R-04-030).
35. Within 60 days of the effective date of this Order, Univar shall submit a remedy construction completion report for the work completed to date and an operation and maintenance plan.
36. Univar will implement the final Corrective Measures selected in the EPA's Final Decision according to the schedule therein and the schedule attached as Attachment 2, or any extension of the schedule granted by EPA.

37. Univar shall complete all the final Corrective Measures within a reasonable period of time so as to protect human health and the environment.
38. Univar must implement the monitoring plan and the institutional controls selected in EPA's Final Decision according to the schedule contained therein or any extension of the schedule granted by EPA.
39. Univar must assure that the institutional controls selected in the EPA's Final Decision are continually maintained unless and until EPA determines that performance standards have been met such that the controls are no longer necessary.
40. To implement the institutional controls, Univar will record the land use restrictions with the St. Joseph County Recorder in an Environmental Restrictive Covenant ("Restrictive Covenant") applicable to the Facility according to the schedule in EPA's Final Decision. In the Restrictive Covenant, Univar, among other things, will consent to EPA and the Indiana Department of Environmental Management ("IDEM") having a right of access to the Facility and will reserve for itself, EPA and its representatives, as a third party beneficiary, and IDEM and its authorized representatives under Indiana Code § 13-14-2-6(6) and as third party beneficiary, the right to enforce the Restrictive Covenant through legal action in a court of competent jurisdiction. The Restrictive Covenant will also provide for at least twenty-one (21) days notice to EPA prior to transfer of any interest in the Facility. Univar must ensure that the Restrictive Covenant remains in place and effective. The Restrictive Covenant that Univar will file with the St. Joseph County Recorder is attached as Attachment 3 (unless EPA approves a revised Restrictive Covenant to be filed). Univar agrees to modify the Restrictive Covenant if, after completion of the corrective action remediation, EPA and IDEM determine that modification is necessary to protect human health and the environment.
41. Any instrument transferring complete or partial ownership of the Facility through sale, deed or otherwise by Univar shall be recorded with the St. Joseph County Recorder, shall contain all the terms set out in Attachment 3 and be substantially in the form attached hereto as Attachment 4, and shall provide that:
 - A. Univar reserves the right of access for the purpose of conducting any activity related to this Order and reserves the right to enforce the Restrictive Covenant filed with the St. Joseph County Recorder for (i) Univar; (ii) U.S. EPA and its representatives, as third party beneficiaries; and (iii) IDEM and its representatives, as third party beneficiaries;
 - B. The transferee expressly agrees to comply with the Restrictive Covenant;
 - C. The agreement to comply with the Restrictive Covenant shall be expressly included by any subsequent transferor in any instrument transferring complete or partial ownership of the Facility;

- D. U.S. EPA and IDEM shall be expressly named in any instrument effecting such transfer of complete or partial ownership of the Facility as a third party beneficiary of the Restrictive Covenant and such instrument shall provide that U.S. EPA may directly enforce such obligations and rights against the transferee under such instrument, and any successor to any such transferee; and
- E. Any subsequent instrument of which U.S. EPA is a third party beneficiary, effecting a transfer of complete or partial ownership of the Facility shall be recorded with the St. Joseph County Recorder.
42. Any instrument transferring complete or partial possession of the Facility through lease by Univar shall contain all the terms set out in Attachment 3 and Univar shall record a Memorandum of Lease with the St. Joseph County Recorder substantially in the form attached hereto as Attachment 5 (Memorandum of Lease). Any such lease shall provide that:
- A. Univar reserves the right of access for the purpose of conducting any activity related to this Order and reserves the right to enforce the Restrictive Covenant filed with the St. Joseph County Recorder for (i) Univar; (ii) U.S. EPA and its representatives, as third party beneficiaries; and (iii) IDEM and its representatives, as third party beneficiaries;
- B. The lessee expressly agrees to comply with the Restrictive Covenant;
- C. The agreement to comply with the Restrictive Covenant shall be expressly included in any subsequent lease transferring complete or partial possession of the Facility;
- D. U.S. EPA and IDEM shall be expressly named in any lease effecting such transfer of complete or partial possession of the Facility as a third party beneficiary thereof and such instrument shall provide that U.S. EPA may directly enforce such obligations and rights against the lessee under such instrument and any successor to any such lessee; and
- E. Any subsequent Memorandum of Lease of which U.S. EPA is a third party beneficiary, effecting a transfer of complete or partial possession of the Facility shall be recorded with the St. Joseph County Recorder.
43. Univar shall provide at least twenty-one (21) days prior written notice to EPA of any proposed conveyance of all or part of the Facility.
- A. For any conveyance using the form Deed attached hereto as Attachment 4 or a deed substantially similar to Attachment 4 in all material aspects, or for any lease using the form Memorandum of Lease attached hereto as Attachment 5 or a Memorandum of Lease substantially similar to Attachment 5 in all material aspects, such notice shall include submittal to EPA of the conveyance document using the form Deed, or form

Memorandum of Lease if applicable, and a current title search, commitment for title insurance or other evidence of title acceptable to EPA which documents that the recorded Restrictive Covenant remains in place and effective, as provided in Paragraph 40.

B. For any conveyance not using the form Deed in Attachment 4 or form Memorandum of Lease in Attachment 5, Univar shall submit to EPA for review and concurrence a draft instrument of conveyance or lease that complies with the requirements of Paragraph 41 or 42, whichever is applicable. Such notice under this subparagraph will include the proposed draft deed, in recordable form, or other instrument of conveyance, including a lease, that is enforceable under the laws of the State of Indiana, and a current title search, commitment for title insurance or other evidence of title acceptable to EPA which documents that the recorded Restrictive Covenant remains in place and effective, as provided in Paragraph 40.

C. Univar shall record with the St. Joseph County Recorder, the instrument of conveyance, or memorandum of lease in the case of a lease.

D. Univar shall provide a true copy of the recorded instrument of conveyance, or memorandum thereof in the case of a lease, showing the instrument number of recordation to EPA and IDEM within thirty (30) days after Univar's receipt of a copy thereof from the St. Joseph County Recorder.

44. For documents submitted by Univar for EPA approval, EPA may provide Univar with its written approval, its approval with conditions and/or modifications, disapproval, or disapproval with comments. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments. Univar shall revise any such submittal in accordance with EPA's written comments and will submit to EPA any revised submittals within 30 days after receiving EPA's written comments (or a longer time if agreed to by the parties.) Revised submittals are subject to EPA approval, approval with conditions and/or modifications, disapproval, or disapproval with comments. EPA will provide Univar with an opportunity for discussion before any unilateral modification required by EPA under this paragraph takes effect. Upon receipt of EPA's written approval the submittal becomes an enforceable part of this Order.

45. Reporting and other requirements:

A. Univar shall establish a publicly accessible repository for information related to EPA's Final Decision after the effective date of this Order and maintain the public repository until termination of this Order. Further, Univar will conduct public outreach and involvement activities as appropriate.

B. By March 1 of each year, unless an extension is granted by EPA, Univar shall provide an annual report to EPA on its activities under this Order for the previous calendar year. The report will list work performed, data collected, problems encountered, and upcoming project schedule. This annual report shall also include a

status report on maintenance of the institutional controls. Univar shall notify EPA if a new owner fails to maintain the institutional controls within 10 days of discovery of such failure. The frequency of the annual report may be modified by agreement of the Project Managers.

C. Independent of the annual reports under paragraph 45.B, Univar shall provide advance written notice to EPA of any major activities or changes in operations at the Facility relevant to the Final Remedy.

D. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least an annual basis to discuss the work proposed and performed under this Order. The frequency of this meeting may be modified by agreement of the parties' Project Managers.

E. EPA may request supplemental information from Univar related to implementation of the selected remedy for the Facility under this Order. Univar shall provide any supplemental information that EPA requests in writing within the time period specified in the request, or within any extension to the time period granted by EPA.

X. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

46. Estimated Cost of the Work.

A. Initial Cost Estimate. By June 12, 2010, Univar shall submit to EPA for approval detailed written estimates, in current dollars, of the estimated cost of Work to Be Performed under Section IX of this Order (Initial Cost Estimate). The Initial Cost Estimate must account for the costs of active remediation and monitored natural attenuation for fifteen years in addition to all remaining construction work. Univar shall annually adjust the Initial Cost Estimate for inflation and for changes in the Scope of the Work to be performed, within sixty days prior to the anniversary date of the establishment of the financial assurance instrument(s), until the Work required by this Order is completed. Univar shall submit each annual Cost Estimate to EPA for review.

B. Second Cost Estimate. If by March 31, 2024, the results indicate that the VOC concentrations in the Area 3 point of compliance wells will remain above MCLs after 15 years, then Univar shall submit a cost estimate for a monitored natural attenuation (MNA) study to predict when VOC concentrations will attenuate to MCLs (Second Cost Estimate). Univar shall adjust the costs for year 15 in the Initial Cost Estimate by adding this Second Cost Estimate for the MNA study to the costs for year 15.

C. Third Cost Estimate. Univar shall submit a third cost estimate for the costs of all remaining long term work necessary to meet the MCLs in Area 3 point of compliance wells at the same time that it submits the results of the MNA study, July 31, 2025, unless

an extension has been granted by EPA (Third Cost Estimate). Univar shall annually adjust the Third Cost Estimate for inflation and for changes in the Scope of Work to be performed within sixty days prior to the anniversary date of the establishment of the financial assurance instrument(s), until the Work required by this Order is completed. Univar shall submit each annual Third Cost Estimate to EPA for review.

47. Assurances of Financial Responsibility for Completing the Work

A. Within 90 days after EPA approves the Initial Cost Estimate, unless an extension has been granted by EPA, Univar shall establish and maintain financial assurance for the benefit of the EPA in the amount of the approved Cost Estimate. However, EPA may request in writing that Univar establish and maintain the financial assurance in the amount of the Initial Cost Estimate prior to final approval. Univar may use one or more of the financial assurance forms described in subparagraphs 1-6 below. Any and all financial assurance instruments provided pursuant to this Order shall be submitted to EPA for review in draft form at least 30 days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

- (1) A trust fund established for the benefit of EPA, administered by a trustee;
- (2) A surety bond unconditionally guaranteeing performance of the Work to be Performed in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirement of the trust fund in subparagraph (1) above;
- (3) An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph (1) above;
- (4) An insurance policy that provides EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument;
- (5) A corporate guarantee, executed in favor of the EPA by one or more of the following: (a) a direct or indirect parent company, or (b) a company that has a "substantial business relationship" with Univar (as defined in 40 CFR § 264.141(h), to perform the Work to Be Performed under this Order or to establish a trust fund as permitted by subparagraph (1) above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 CFR § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee; or
- (6) A demonstration by Univar that it meets the financial test criteria of 40 CFR § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 CFR § 264.143(f) are satisfied.

The contents of Univar's financial assurance documents must be developed and implemented consistent with the standards and procedures described in EPA's "Model RCRA §3008(h) Order on Consent – Financial Assurance Section" (Feb. 2006).

- B. Within 90 days after EPA approves the Second Cost Estimate, unless an extension has been granted by EPA, Univar shall establish and maintain financial assurance for the benefit of the EPA in the amount of the approved Second Cost Estimate. However, EPA may request in writing that Univar establish and maintain the financial assurance in the amount of the Second Cost Estimate prior to final approval. Univar may use one or more of the financial assurance instruments described in Subparagraphs A.(1)-(6) above.
- C. Within 90 days after EPA approves the Third Cost Estimate, unless an extension has been granted by EPA, Univar shall establish and maintain financial assurance for the benefit of the EPA in the amount of the approved Third Cost Estimate. However, EPA may request in writing that Univar establish and maintain the financial assurance in the amount of the Third Cost Estimate prior to final approval. Univar may use one or more of the financial assurance instruments described in Subparagraphs A.(1)-(6) above.
- D. If at any time Univar provides financial assurance for the completion of the Work by means of a corporate guarantee or financial test, Univar shall also comply with the other relevant requirements of 40 CFR § 264.143(f), 40 CFR § 264.151(f), and 40 CFR § 264.151(h) relating to these methods, and will promptly provide any additional information requested by EPA from itself or the corporate guarantor at any time.
- E. For purposes of the corporate guarantee or the financial test described above, references in 40 CFR § 264.143(f) to “the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates” shall mean “the sum of all environmental remediation obligations” (including obligations under CERCLA, RCRA, UIC, TSCA and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimates.
- F. Univar may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under this Order.
- G. Univar shall submit all executed and/or otherwise finalized instruments or other documents to EPA’s Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-35990, within 30 days after date of execution or finalization as required to make the documents legally binding. Univar shall also provide copies to the EPA Project Manager.
- H. If at any time EPA determines that a cost estimate or a financial assurance mechanism provided pursuant to this Section is inadequate, EPA shall notify Univar in writing. If at any time Univar becomes aware of information indicating that any cost estimate(s) or financial assurance mechanism(s) provided pursuant to this Section is inadequate, Univar shall notify EPA in writing of such information within 30 days of receipt of such information. Within 30 days of receipt of notice of EPA’s determination, or within 30 days of Univar’s notifying EPA of such inadequacy, Univar shall obtain and present to EPA for approval a proposal for a revised cost estimate or a revised or

alternative form of financial assurance listed above that satisfies all requirements set forth in this Section.

I. Univar's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order.

48. Modification of the Amount and/or Form of Performance Guarantee.

A. Reduction of Amount of Financial Assurance. If Univar believes that any of the Cost Estimates have diminished below the amount covered by the existing financial assurance provided under this Order, Univar may, at the same time that Univar submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

B. Change of Form of Financial Assurance. If Univar desires to change the form or terms of financial assurance, Univar may, at the same time that Univar submits the annual Cost Estimate, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal shall specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and shall satisfy all requirements set forth in this Section. Within ten days after receiving written approval of the proposed revised or alternative financial assurance, Univar shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Univar shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Comptroller's Office, with copies to EPA's Project Manager, as provided in Paragraph 47.G above.

C. Release of Financial Assurance. Univar may submit a written request to the Director, Land and Chemicals Division that EPA release Univar from the requirement to maintain financial assurance under this Section once EPA and Univar have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XX (Termination and Satisfaction) of this Order. The Director, Land and Chemicals Division shall notify both Univar and the provider of the financial assurance that Univar is released from all financial assurance obligations under this Order.

49. Performance Failure.

A. If EPA determines that Univar (i) has ceased implementing any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both the Univar and the financial assurance provider of Univar's failure to perform. The notice issued by EPA will specify the grounds upon which such notice was

issued and will provide Univar with a period of ten days within which to remedy the circumstances giving rise to the issuance of such notice.

B. Failure by Univar to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the ten-day notice period specified in Paragraph 49.A shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to subparagraphs 47. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Univar shall within ten days deposit into a trust fund approved by EPA, a cash amount equal to the applicable Cost Estimate.

XI. ACCESS

50. For the purpose of conducting any activity related to this Order, upon reasonable notice to Univar, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the Facility to, among other things: interview Univar personnel and contractors; review Univar's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Univar submits to EPA. Univar will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Univar or its contractors or consultants. Univar may request split samples or copies of all photographs tapes, videos or other recorded evidence created by EPA and releaseable under the Freedom of Information Act.
51. Nothing in this Section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675.

XII. RECORDS PRESERVATION

52. Univar must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which relate to this Order. Univar must notify EPA in writing 90 days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. Univar's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Land and Chemicals Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Univar must also promptly give EPA's Project Manager a copy of the notice.

53. Univar will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

XIII. STIPULATED PENALTIES

54. Univar must pay the following stipulated penalties to the United States for violations of this Order:
- A. For failure to submit annual reports by the dates scheduled in paragraph 45.B, above: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
 - B. For failure to submit remedy construction completion report and O&M plan in paragraph 35: \$500 per day for the first 14 days and \$1,000 per day thereafter.
 - C. For failure to implement, according to the approved schedule and terms, the final Corrective Measures as required by paragraph 36: \$2,000 per day for the first 14 days and \$4,000 per day thereafter.
 - D. For failure to submit supplemental information as required and scheduled in paragraph 45.E: \$2,000 per day for the first 14 days and \$4,000 per day thereafter.
 - E. For failure to establish and maintain the financial assurance as required and scheduled in paragraph 47: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
 - F. For failure to implement the institutional controls as required in paragraphs 40: \$3,000 per day for the first 14 days and \$6,000 per day thereafter.
 - G. For failure to comply with the requirements in paragraphs 41 and 42 on the terms to be included in any conveyance or lease: \$1000 per day for the first 14 days and \$2000 per day thereafter.
55. Whether or not Univar has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Univar complies. For item A in paragraph 54, above, if EPA identifies a violation based on an annual report submitted under paragraph 45.B, stipulated penalties will not accrue during the period, if any, beginning 31 days after the submission of the annual report until the date that EPA notifies Univar in writing of any violation. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.
56. Univar must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving EPA's written demand to pay the penalties, unless Univar invokes the dispute resolution procedures under Section XIV: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

57. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Univar receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Univar must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.
58. Univar must pay all penalties by certified or cashier's check payable to the "Treasurer, United States of America" and will send the check by First Class United States Mail, postage prepaid, to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Univar chooses to send its penalty payment by an overnight delivery service, it should send its payment to the address as follows:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact: Natalie Pearson
314-418-4087

A transmittal letter stating the name of the Facility, Univar's name and address, and the EPA docket number of this action must accompany the payment. Univar will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

If Univar prefers to send payment by wire transfer, Univar will contact the EPA Project Manager for instructions.

59. Univar may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XIV: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Univar must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Univar must submit such payment to EPA within 30 days after receiving the resolution according to the payment instructions of this Section.
60. Neither invoking dispute resolution nor paying penalties will affect Univar's obligation to comply with the terms of this Order not directly in dispute.
61. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Univar's violation of any

terms of this Order. However, EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

XIV. DISPUTE RESOLUTION

62. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion that arise under this Order.
63. If any party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.
64. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.
65. The parties will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, any party may request a conference with appropriate senior management to discuss the dispute.
66. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, the parties may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record EPA will respond to Univar's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 (EPA Dispute Decision).
67. Stipulated penalties with respect to any disputed matter shall continue to accrue during pendency of the dispute, but payment shall be stayed pending final resolution of the dispute. In the event Univar does not prevail on the disputed issue, stipulated penalties shall be paid within 30 days after the EPA Dispute Decision.

XV. FORCE MAJEURE AND EXCUSABLE DELAY

68. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Univar's control that delays or prevents the timely performance of any obligation under this Order despite Univar's best efforts.
69. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Univar must notify EPA within two business days after learning that the event may cause a delay. If Univar

wishes to claim a force majeure event, within 15 business days thereafter Univar must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

70. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation.

XVI. MODIFICATION

71. This Order may be modified only by mutual agreement of EPA and Univar. Any agreed modifications will be in writing, will be signed by all the parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

XVII. RESERVATION OF RIGHTS

72. Nothing in this Order restricts EPA's authority to seek Univar's compliance with the Order and applicable laws and regulations. EPA 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 Order, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973. In any later proceeding, Univar shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.
73. If EPA determines that Univar's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Univar cannot perform any of the work ordered, EPA may order Univar to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.
74. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director Land and Chemicals Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.
75. Univar does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Univar reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's stop work orders and (b) regarding liability or responsibility for conditions at the Facility, except for its

right to contest EPA's jurisdiction to issue or enforce this Order. Univar has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Univar reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XVIII. OTHER CLAIMS

76. Univar waives any claims or demands for compensation or payment under Sections 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

77. Univar agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (i) arising from, or on account of, acts or omissions of Univar, Univar's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order; and (ii) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Univar and any persons for performance of the Work on or relating to the Facility, including claims on account of construction delays. In addition, Univar agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence. It is not the purpose of this Order nor the intention of the parties hereto to release any persons or entities not parties to or bound by this Order from any claims or liabilities in connection with the work performed or required hereunder or with environmental conditions at the facility.

XX. TERMINATION AND SATISFACTION

78. Univar may request that EPA issue a determination that Univar has met the requirements of the Order for all or a portion of the Facility. Univar may also request that EPA issue a "no further action" determination for all or a portion of the Facility.
79. The provisions of this Order will be satisfied upon the parties execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," consistent with EPA's Model Scope of Work.
80. Univar's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section XII, to maintain any necessary institutional controls or other long term measures, and to recognize EPA's reservation of rights as required in Section XVII.

XXI. PUBLIC COMMENT ON THIS ORDER

81. EPA will provide public notice and a reasonable opportunity for public comment on the proposed Order. After consideration of any comments submitted during a public comment period of not less than 30 days (which EPA may extend), EPA may withhold consent or seek to amend all or part of this Order if EPA determines that comments received disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XXII. SEVERABILITY


82. If a court issues an order that invalidates any provision of this Order, the remaining provisions will remain in force and will not be affected.

XXIII. EFFECTIVE DATE

83. This Order is effective on the date that EPA signs the Order after the public comment period as specified in Section XXI above. Within two business days of signing this Order, EPA will provide Univar with a copy of the signature page of this Order signed by the Director of the Land & Chemical Division. The undersigned representative of Univar certifies that it is fully authorized to enter into the terms and conditions of this Order and to bind the party it represents to this document.


IT IS SO AGREED:

DATE: 7-9-2010

BY: 
Gary Tonry
VP Operations
Univar USA Inc
17425 NE Union Hill Rd.
Redmond, WA 98052

IT IS SO ORDERED:

DATE: 9/15/10

BY: 
Bruce Sypniewski, Acting Director
Land & Chemicals Division
U.S. EPA Region 5

RECEIVED
SEP 15 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

Univar USA Inc.
South Bend, Indiana

DOCKET NO: RCRA-05-2010-0022

CERTIFICATE OF SERVICE

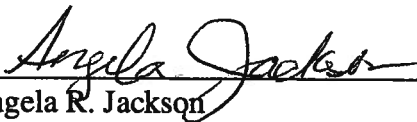
I hereby certify that I filed the original and one copy of the Administrative Order on Consent ("Order") in this matter with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, and that I mailed by Certified Mail Receipt No [7001 0320 0006 0192 5060], the second original to Respondent, addressed as follows:

Mindy Boehr
Barnes & Thornburg
11 South Meridan Strett, Suite 1313
Indianapolis, Indiana 46209-6406

and that I delivered a correct copy by intr-office mail, addressed as follows:

Gaylene Vasaturo
Office of Regional Counsel(C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

on this 15 day of September, 2010



Angela R. Jackson
Administrative Program Assistant
US Environmental Protection Agency Region 5
Remediation and Reuse Branch
Land and Chemicals Division

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 5060

RECEIVED
SEP 15 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**