ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re: Univar Solutions USA Inc.	)	Docket Nos. CAA-HQ-2022-5005 & EPCRA-HQ-2022-5005

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.[1]

ENVIRONMENTAL APPEALS BOARD

Dated: 12/21/2022

Kathie A. Stein
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Kathie A. Stein.

BEFORE THE ENVIRONMENTAL APPEALS BOARD OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.

IN THE MATTER OF:		
Univar Solutions USA Inc.	**Docket No.**	**CAA-HQ-2022-5005** **EPCRA-HQ-2022-5005**
Respondent		

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant) and Univar Solutions USA Inc. (Univar Solutions or Respondent) agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

PRELIMINARY STATEMENT

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to sections 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and (d), and sections 325(b)(3) and (c)(4) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11045(b)(3) and (c)(4). Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter was appropriate for administrative penalty action.

2. Complainant is the Director of the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, EPA Headquarters.

3. Respondent is Univar Solutions, a corporation formed in the state of Washington, and authorized to conduct business in the states of Rhode Island, Pennsylvania, and Colorado, among other states.

4. This Consent Agreement and Final Order (CAFO or Consent Agreement) asserts that Respondent has violated the chemical accident prevention provisions in 40 C.F.R. part 68, promulgated pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the

general duty clause of section 112(r)(1) of the CAA and that Respondent is therefore in violation of sections 112(r)(7) and (r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(1) and (r)(7). This CAFO also serves as notice pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these CAA section 112(r) violations.

5. Furthermore, this CAFO serves as notice that the EPA asserts that Respondent has violated section 313 of EPCRA, 42 U.S.C. § 11023, and the Toxic Chemical Release Reporting: Community Right-to-Know regulations in 40 C.F.R. part 372, promulgated pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, and that Respondent is therefore in violation of section 313 of EPCRA, 42 U.S.C. § 11023.

6. To avoid the disruption of orderly business activities and the expense of litigation and to effect an expeditious settlement of this matter, Respondent, for purposes of this proceeding only, and as provided by 40 C.F.R. § 22.18(b)(2), agrees as follows:

    a. Respondent admits that EPA has jurisdiction over the subject matter of this Consent Agreement and over the Respondent and waives any defenses it might have as to jurisdiction. Respondent agrees not to contest EPA's jurisdiction to enter into this Consent Agreement, Complainant's delegated authority to execute this Consent Agreement, EPA's authority to enforce the terms of this Consent Agreement through the executed Final Order, or the jurisdiction of the Environmental Appeals Board (EAB) to enter and ratify the Consent Agreement through the Final Order.

    b. Respondent consents to the assessment of the full amount of the civil penalty as provided for in paragraph 208, below, and agrees to make payment in accordance with paragraphs 209-211.

    c. Respondent consents to all conditions specified in this Consent Agreement.

    d. Respondent waives any right it might have to contest through a judicial or administrative hearing the factual allegations and violations of law as alleged.

    e. Respondent waives the rights it might have to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement under any otherwise applicable law.

7. Complainant and Respondent entered into a Tolling Agreement dated June 25, 2021, as amended by the First Amended Tolling Agreement on November 29, 2021, by the Second Amended Tolling Agreement, which was executed by Univar Solutions on May 28, 2022, by the Third Amended Tolling Agreement, which was executed by Univar Solutions on September 16, 2022, and by the Fourth Amended Tolling Agreement, which was executed on October 19, 2022 and tolls through November 30, 2022 any applicable statute of limitations for civil claims brought by Complainant against Respondent for

violations of EPCRA section 313, 42 U.S.C. § 11023, and CAA section 112(r), 42 U.S.C. § 7412(r), and their implementing regulations.

STATUTORY AND REGULATORY FRAMEWORK (AUTHORITY)

CLEAN AIR ACT SECTION 112(r) AND REGULATORY BACKGROUND

8. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

9. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions, as amended, which implements section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

10. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d).

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 define "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.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and 40 C.F.R. § 68.3 define "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). "Threshold quantity" is defined at 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The list of regulated substances and their respective threshold quantities is codified at 40 C.F.R. § 68.130.

17. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. part 68 require the owner and operator of a stationary source to develop and implement a Risk Management Program at each stationary source at which a regulated substance is present in more than a threshold quantity to detect and minimize accidental releases of such substances from the stationary source and to provide a prompt emergency response to such releases in order to protect human health and the environment. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

18. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. part 68 no later than June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

19. "Process" is defined at 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

20. "Covered process" is defined at 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

21. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System (NAICS) code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard at 29 C.F.R. § 1910.119.

22. Pursuant to 40 C.F.R. § 68.65(a), the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and

understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the RMP regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

23. Pursuant to 40 C.F.R. § 68.65(d)(1)(v), information pertaining to the equipment in the process shall include the ventilation system design.

24. Pursuant to 40 C.F.R § 68.65(d)(2), the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). Pursuant to 40 C.F.R § 68.65(d)(3), for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

25. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to section 112(r)(3), 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 (a) identify hazards which may result from accidental releases of such substances using appropriate hazard techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the General Duty Clause (GDC).

26. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.[1] The term includes, but is not limited to, RMP regulated substances listed in section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130, and can include chemicals on the list of extremely hazardous substances published under section 302 of EPCRA, 42 U.S.C. § 11002, at 40 C.F.R. part 355, appendices A and B. Also, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous.[2]

27. The term "have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code" means owners and operators must comply with the GDC in the same manner and to the same extent as employers must comply with the Occupational Safety Health Act administered by OSHA.

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[1] Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).
[2] Id.

28. The standard of care for designing and maintaining a safe facility is to: base design considerations upon applicable design codes, federal and state regulations, and recognized industry practices; to prevent chemical releases or minimize their impacts; and to develop and implement standard operating procedures, preventative maintenance programs, personnel training programs, management of change practices, incident investigation procedures, and self-auditing procedures. Examples of design codes and recognized industry practices applicable to Univar Solutions include, for example, the codes and guidelines specified in paragraph 56, collectively referred to as industry standards. See also *U.S. EPA, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000)*. EPA consults these industry standards to understand the hazards posed by the use of various extremely hazardous substances and the standard of care that industry, itself, has found to be appropriate for managing those hazards.

29. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. The Department of Justice (DOJ) concurred on such a determination on June 1, 2021. Furthermore, the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. part 19, increased this statutory maximum penalty to $51,796 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 12, 2022; the administrative penalty that can be sought without a determination is $414,364.

EPCRA SECTION 313 STATUTORY AND REGULATORY BACKGROUND

30. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility that (i) has ten or more full-time employees, (ii) is in Standard Industrial Classification (SIC) Codes 20 through 39, and (iii) manufactured, processed, or otherwise used one or more toxic chemicals, listed under section 313(f) of EPCRA and 40 C.F.R. §§ 372.28 and 372.65, above their reporting threshold must submit to EPA and the state in which the facility is located a chemical release form published under section 313(g) of EPCRA for each such toxic chemical.

31. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations setting forth requirements for the submission of information

relating to the release of toxic chemicals under section 313. These regulations, as amended, are presently codified at 40 C.F.R. part 372.

32. "Person" as defined by EPCRA section 329(7), 42 U.S.C. § 11049(7), means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or interstate body.

33. "Facility" as defined by 40 C.F.R. § 372.3 means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.

34. "Full-time employee" as defined by 40 C.F.R. § 372.3 means 2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

35. "Toxic chemical" as defined by 40 C.F.R. § 372.3 means a chemical or chemical category listed in § 372.65.

36. "Process" as defined by 40 C.F.R. § 372.3, means the preparation of a toxic chemical, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the substance, or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

37. Pursuant to section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25, with respect to a toxic chemical manufactured or processed, the toxic chemical reporting threshold for the reporting form to be submitted on or before July of the succeeding year is 25,000 pounds of the toxic chemical per year.

38. Pursuant to section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform Toxic Chemical Release Inventory Form (Form R) for facilities that are subject to the reporting requirements of section 313.

39. Sections 313(a) and (b) of EPCRA, 42 U.S.C. § § 11023(a) and (b), and 40 C.F.R. §§ 372.30(d) and 372.27(d) provide that a complete and accurate reporting form for activities involving a toxic chemical that occurred during a calendar year must be submitted on or before July 1 of the next year.

40. Pursuant to 40 C.F.R § 372.10(a), each person subject to the reporting requirements of this part must retain the following records for a period of 3 years from the date of the submission of a report under § 372.30:

(1) A copy of each report submitted by the person under § 372.30.
(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishments is a covered facility under § 372.22 or § 372.45.
(3) Documentation supporting the report submitted under § 372.30 including the following:
    (i) Documentation supporting any determination that a claimed allowable exemption under § 372.38 applies.
    (ii) Data supporting the determination of whether a threshold under § 372.25 applies for each toxic chemical.
    (iii) Documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.
    (iv) Documentation supporting the use indications and quantity on site reporting for each toxic chemical, including dates of manufacturing, processing, or use.
    (v) Documentation supporting the basis of estimate used in developing any release or off-site transfer estimates for each toxic chemical.
    (vi) Receipts or manifests associated with the transfer of each toxic chemical in waste to off-site locations.
    (vii) Documentation supporting reported waste treatment methods, estimates of treatment efficiencies, ranges of influent concentration to such treatment, the sequential nature of treatment steps, if applicable, and the actual operating data, if applicable, to support the waste treatment efficiency estimate for each toxic chemical.

41. A certification statement (Form A) may be submitted as an appropriate EPA reporting form in lieu of a Form R if all criteria under 40 C.F.R. § 372.27 are met, including that total annual releases and waste management of a listed chemical do not exceed 500 pounds.

42. Each owner or operator who determines that the owner or operator may apply the alternate threshold as specified under § 372.27(a) must retain the following records for a period of 3 years from the date of the submission of the certification statement as required under § 372.27(b):

(1) A copy of each certification statement submitted by the person under § 372.27(b).
(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishment is eligible to apply the alternate threshold as specified in § 372.27.
(3) Documentation supporting the certification statement submitted under § 372.27(b), including the following:
    (i) Data supporting the determination of whether the alternate threshold specified under § 372.27(a) applies for each toxic chemical.
    (ii) Documentation supporting the calculation of annual reportable amount, as defined in § 372.27(a), for each toxic chemical, including documentation supporting the

calculations and the calculations of each data element combined for the annual reportable amount.

(iii) Receipts or manifests associated with the transfer of each chemical in waste to off-site locations.

43. Pursuant to 40 C.F.R § 372.10(c), records retained under this section must be maintained at the facility to which the report applies or from which a notification was provided. Such records must be readily available for purposes of inspection by EPA.

44. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to $25,000 per day for each violation of section 313 and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. part 19, increased this statutory maximum penalty to $62,689 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 12, 2022.

GENERAL ALLEGATIONS

45. Respondent is incorporated in the state of Washington and at all times referred to herein was a "person" as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

46. Respondent is the owner and operator of the following facilities as that term is defined in section 112(a)(9), 42 U.S.C. § 7412(a)(9), of the CAA, and within the meaning of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and section 313 of EPCRA, 42 U.S.C. § 11023:

Providence RI Facility (Harborside)
6 Harborside Boulevard
Providence, RI 02905

Providence RI Facility (Terminal)
175 Terminal Road
Providence, RI 02905

Middletown PA Facility
532 East Emaus Street
Middletown, PA 17057

Bunola PA Facility
328 Bunola River Road
Bunola, PA 15020

Denver CO Facility
4300 Holly Street
Denver, CO 80216

47. Pursuant to section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted inspections of the facilities on the following dates to determine Respondent's compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68:

Providence RI Facility – Harborside – November 18, 2019
Providence RI Facility – Terminal – November 19, 2019
Middletown PA Facility – December 8, 2016
Bunola PA Facility - May 2, 2018
Denver CO Facility – March 21, 2018

On August 6, 2021, EPA issued a Notice of Violation and Opportunity to Confer (NOVOC) to Respondent, and the parties met to discuss the potential CAA section 112(r) violations.

48. Pursuant to section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. part 372, the EPA also conducted an inspection to determine Respondent's compliance with section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R part 372 at the Denver CO facility on March 21, 2018. On November 3, 2019, EPA issued a NOVOC to Respondent, and the parties met to discuss the potential EPCRA section 313 violations.

49. The following RMP regulated substances and their threshold quantities (TQ), listed under 40 C.F.R. § 68.130, can be found at the facilities designated below with their onsite quantities:

a. Harborside Facility
    (1) anhydrous ammonia
        (i) TQ 10,000 lbs.
        (ii) Onsite 363,164 lbs. in single process
    (2) aqueous ammonia (conc. 20% or greater)
        (i) TQ 20,000 lbs.
        (ii) Onsite 949,786 lbs. across two separate processes
    (3) chlorine
        (i) TQ 2,500 lbs.
        (ii) Onsite 1,426,500 lbs
    (4) formaldehyde
        (i) TQ 15,000 lbs.
        (ii) Onsite 16,996 lbs. in a single process
b. Bunola Facility
    (1) sulfur dioxide
        (i) TQ 5,000 lbs.
        (ii) Onsite 38,000 lbs. in a single process

(2) chlorine
    (i) TQ 2,500 lbs.
    (ii) Onsite 182,260 lbs. in a single process
(3) ammonia (conc 20% or greater)
    (i) TQ 20,000 lbs.
    (ii) Onsite 245,000 lbs. across two processes

c. Middletown Facility
(1) sulfur dioxide
    (i) TQ 5,000 lbs.
    (ii) Onsite 1,183,000 lbs. across two processes
(2) chlorine
    (i) TQ 2,500 lbs.
    (ii) Onsite 3,245,000 lbs. across two single processes
(3) anhydrous ammonia
    (i) TQ 10,000 lbs.
    (ii) Onsite 15,000 lbs. in a single process
(4) formaldehyde
    (i) TQ 15,000 lbs.
    (ii) Onsite 183,000 lbs. in a single process

50. The RMP regulated substances listed in paragraph 49 are extremely hazardous substances under section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

51. Hydrogen chloride, hydrogen peroxide (52% or greater), nitric acid, and sulfuric acid are listed as extremely hazardous substances under EPCRA section 302 and are extremely hazardous substances within the meaning of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

52. Potassium hydroxide (caustic potash 45%) is an extremely hazardous substance within the meaning of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Potassium hydroxide is a CERCLA-listed hazardous substance with a reportable quantity of 1,000 pounds. 40 C.F.R. § 302.4. It reacts exothermically with water as well as strong acids such as nitric acid. It is corrosive to metals and causes severe skin burns and eye damage per Univar Solutions' safety data sheets (SDS). It also is incompatible with several classes of materials per Univar Solutions' SDS, including water, organic materials, halogenated hydrocarbon, strong acids, and metals.

53. Isopropanol is an extremely hazardous substance within the meaning of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). It is a chemical that may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, flammability, or volatility. Isopropanol is a highly flammable liquid vapor and may form explosive mixtures with air. Furthermore, vapor should not be allowed to accumulate in low or confined areas and should not be exposed to heat or ignition.

54. Methanol is an extremely hazardous substance within the meaning of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Methanol is a chemical that may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, flammability, or volatility. Methanol is a class 1B flammable liquid that requires specialized fire suppression because it can burn with no visible flame and stays flammable even when mixed with large quantities of water. A 75% water/25% methanol mixture remains a flammable liquid.

55. Natural gas is an extremely hazardous substance within the meaning of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). It is a National Fire Protection Association (NFPA) Category 4 substance (the most flammable NFPA characterization). Natural gas is easily ignited by heat, sparks or flames and will form explosive mixtures with air. Vapors from liquefied gas are initially heavier than air and spread along ground. Vapors may travel to the source of ignition and flash back.

56. The following key shows the acronyms for certain industry standards and RAGAGEP referred to in this Consent Agreement.

ANSI/ASME – American National Standards Institute/American Society of Mechanical Engineers
ANSI/CGA – American National Standards Institute/Compressed Gas Association
ANSI/ISEA – American National Standards Institute/International Safety Equipment Association
ANSI/UL – American National Standards Institute/Underwriters Laboratories
CGA – Compressed Gas Association
IFC – International Fire Code
NFPA – National Fire Protection Association

EPA FINDINGS OF CAA SECTION 112(r) VIOLATIONS

57. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows.

HARBORSIDE FACILITY

58. The Harborside facility is a chemical blending, repackaging, and distribution facility, employing approximately 48 employees and operating a maximum of two 8-hour shifts daily, seven days a week. Facility operations are spread across four primary site buildings and include bulk chemical storage, bleach production and packaging, aqueous ammonia product blending and repackaging, acid product blending and packaging, fleet and other miscellaneous facility maintenance.

59. The Harborside facility contains process equipment that produces, processes, handles, stores, or uses anhydrous ammonia, aqueous ammonia (conc. 20% or greater), chlorine

and formaldehyde, which are RMP regulated substances under section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130, and from which accidental releases may occur.

60. Respondent is the owner and operator of a "stationary source" under section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

61. Respondent produces, processes, handles, stores, or uses anhydrous ammonia in a single process, aqueous ammonia (conc. 20% or greater) in two separate processes, chlorine in a single process, and formaldehyde in a single process, at levels greater than their respective threshold quantities as defined in 40 C.F.R. §§ 68.130 and 68.115; thus, these processes are covered processes as defined in 40 C.F.R. § 68.3.

62. From the time Respondent first had onsite a greater than a threshold quantity of an RMP regulated substance in a process, Respondent was subject to the requirements of sections 112(r)(7) and (r)(7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and (r)(7)(E), and 40 C.F.R. part 68 because it owned and operated a stationary source that had more than a threshold quantity of the RMP regulated substances in a covered process as identified in paragraph 61.

63. Thus, Respondent was required to submit a RMP pursuant to 40 C.F.R. § 68.12(a) and to comply with the Program 3 prevention requirements pursuant to 40 C.F.R. § 68.10(i) for the following reasons: 1) the covered processes at the facility did not meet the eligibility requirements of Program 1; 2) the facility is specified as being in the covered NAICS code 3251; and 3) it is subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. The Respondent submitted an RMP to EPA on May 30, 2019.

64. In addition to the RMP regulated substances in covered processes listed above, Respondent also produces, processes, handles, stores, or uses hydrogen chloride, natural gas, and propane (propane is an RMP regulated substance below threshold quantity in a process at the facility) that could cause accidental releases. Because of toxicity, reactivity, flammability or corrosivity, these chemicals are extremely hazardous substances within the meaning of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

65. As an owner or operator of a stationary source that produces, processes, handles, stores, or uses RMP regulated substances and other extremely hazardous substances, Respondent was, at all times relevant to the allegations herein, also subject to the GDC in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

RMP VIOLATIONS

Count 1

66. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

67. Respondent failed to adequately label pipes associated with covered processes throughout

the Harborside facility, specifically, on: 1) chlorine and other process chemical piping interior to the bleach plant; 2) finished product piping between the bleach plant and the bulk aboveground storage tank farm located immediately to the south; and 3) aqueous/anhydrous ammonia piping exterior to the building 5-alkali area in accordance with relevant RAGAGEP and industry standards of care that include ANSI/ASME A13.1(2015), sections 3.2, 3.3, and 3.4.

68. Respondent's failure to adequately label pipes throughout the Harborside facility, specifically on the processes identified in paragraph 67, and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R. §§68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7(E).

Count 2

69. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

70. Respondent failed to adequately label tank contents and service associated with a covered process on bulk chemical above ground storage tanks exterior to the bleach plant in accordance with relevant RAGAGEP and industry standards of care that include 29 C.F.R. § 1910.1200(f)(6).

71. Respondent's failure to adequately label tank contents and service, specifically on the process identified in paragraph 70, and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R §§ 68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7(E).

Count 3

72. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

73. Respondent failed to equip the ammonia railcar unloading area associated with a covered process with any means of egress in case of emergency in the fenced areas associated with building F5 in accordance with relevant RAGAGEP and industry standards of care that include 29 C.F.R. § 1910.22(c).

74. Respondent's failure to equip the ammonia railcar unloading area associated with a covered process specified in paragraph 73 with any means of egress in case of emergency in the fenced areas associated with building F5 and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R §§ 68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7(E).

Count 4

75. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

76. Respondent failed to label the king valve associated with a covered process on the bulk

anhydrous ammonia storage tank identifying it as the isolation valve for the tank in accordance with relevant RAGAGEP and industry standards of care that include ANSI/ASME 2007 A.13.1 and NFPA 400 (2019) 23.1.4.4.1(3), referencing NFPA 55 (2016) 7.1.7.4.1.

77. Respondent's failure to label the king valve on the covered process specifically identified in paragraph 76 and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R §§ 68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and (7)(E).

Count 5

78. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

79. Respondent allowed the tank saddle for the bulk anhydrous ammonia storage tank, that is associated with a covered process and located in a flood plain, to show signs of having shifted over time and failed to bolt it down to its concrete pad in accordance with relevant RAGAGEP and industry standards of care that include ANSI/CGA G-2.1 (2014), section 6.4.3.

80. Respondent's failure in allowing the tank saddle associated with a covered process for the bulk anhydrous ammonia storage tank specifically identified in paragraph 79 to show signs of having shifted over time and failing to bolt it down to the concrete pad on which it is located and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R §§ 68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and (7)(E).

Count 6

81. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

82. The Harborside facility has a perimeter fence around the entire operation, including the covered processes. Respondent failed to equip gate doors with panic hardware to allow for egress in the event of an emergency in accordance with relevant RAGAGEP and industry standards of care that include: NFPA 101(2018), section 7.2.1.7(1); NFPA 101 (2018), section 7.11.6; and ANSI/UL 305-2012.

83. Respondent's failure to equip gate doors with panic hardware to allow for egress in the event of an emergency in the processes identified in paragraph 82 and thus not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R. §§ 68.65(d)(2) and/or (d)(3) and sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and (7)(E).

GDC VIOLATIONS

Count 7

84. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

85. Respondent failed to use permanent electrical connections to power permanent electrical equipment located in the process bleach plant and the maintenance areas in accordance with relevant RAGAGEP and industry standards of care that include NFPA 1 (2018), Section 11.1.7.6 and NFPA 70 (2017), 400.8, and used extension cords instead, creating a fire hazard. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

86. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. §§ 7412(r)(1).

Count 8

87. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

88. Respondent failed to store incompatible chemicals properly by storing incompatible chemicals adjacent to one another in the flammable storage area exterior to the main site building in the loading area, in the above ground storage tank farm adjacent to the acid shed and in the truck maintenance area. Respondent failed to comply with relevant RAGAGEP and industry standards of care that include: NFPA 1 (2012) section 66.9.17 2012 ed.); NFPA 400 (2010) section 6.1.12; Separation of Incompatible Materials (2010 ed.); for Safe Warehousing of Chemicals, chapter 2.6; and the Center for Chemical Process Safety's Safe Storage and Handling of Reactive Materials, chapter 5.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

89. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 9

90. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

91. Respondent failed to label the contents of the cage containing propane cylinders adjacent to the ammonia above ground storage tank farms in accordance with relevant RAGAGEP and industry standards of care that include NFPA 704 (2017), section 4.3 and NFPA 704 (2017), chapter 9. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

92. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 10

93. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

94. Respondent failed to place NFPA diamonds on building entrances, doors, or bulk chemical storage room entrances that lead to areas where a range of extremely hazardous substances are stored, including entrances to the bleach plant and entrance doors to the building 5 – alkali area, in accordance with relevant RAGAGEP and industry standards of care that include: NFPA 1 (2018), section 63.2.11; NFPA 704 (2017), section 4.3; and NFPA 704 (2017), chapter 9. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

95. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 11

96. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

97. Respondent failed to make signage indicating emergency egresses readily visible in the flammables storage area (building 1) or in building 5 – alkali area in accordance with relevant RAGAGEP and industry standards of care that include NFPA 1 (2018), sections 4.4.3.2.1 and 4.4.3.2.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

98. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 12

99. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

100. Respondent failed to cover adequately open chemical storage containers of flammable liquids with ill-fitting and or missing bungs in the flammables storage area and the acid shed in accordance with relevant RAGAGEP and industry standards of care that include NFPA 1 (2018) 66.18.4.1. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

101. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 13

102. Paragraphs 1-29 and 45-65 are realleged as if fully set forth herein.

103. Respondent failed to provide emergency lighting and sufficient aisle spacing for flammable material storage racks in the flammables storage area (building 1) in accordance with relevant RAGAGEP and industry standards of care that include NFPA 101 (2018), section 7.3.4.1.2 and NFPA 101 (2018), section 101. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

104. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

TERMINAL ROAD FACILITY

105. The Terminal Road facility, a separate facility from the Harborside facility, is used as a chemical storage warehouse and distribution/shipping facility.

106. The Terminal Road facility contains process equipment that produces, processes, handles, stores, or uses anhydrous ammonia, aqueous ammonia (conc. 20% or greater), chlorine and formaldehyde, from which an accidental release may occur. These RMP regulated substances may occur in amounts less than RMP threshold amounts and, as such, the processes associated with these RMP regulated substances also are subject to the GDC.

107. In addition to the RMP regulated substances listed above, Respondent also produces, processes, handles, stores, or uses other extremely hazardous substances, such as hydrogen chloride, natural gas, and propane, among other toxic, flammable, caustic, and corrosive chemicals.

108. The Terminal Road facility is an owner and operator of a "stationary source" under section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

109. As an owner and operator of a stationary source that produces, processes, handles, stores, or uses RMP regulated substances and other extremely hazardous substances, Respondent was at all times relevant to the allegations herein, also subject to the GDC in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

GDC VIOLATIONS

Count 14

110. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

111. Respondent did not provide NFPA diamonds on building entrance doors or on fenced cages surrounding oxidizer storage areas in accordance with relevant RAGAGEP and industry standards of care that include: NFPA 1 (2018), section 63.2.11; NFPA 704 (2017), section 4.1; NFPA 704 (2017), section 4.3; and NFPA 704 (2017), chapter 9. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

112. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 15

113. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

114. Respondent failed to equip fenced cages surrounding the oxidizer storage areas with panic hardware on the gate doors to allow for egress in the event of an emergency in accordance with relevant RAGAGEP and industry standards of care that include: NFPA 101 (2018); section 7.2.1.7.1(1); NFPA 101 (2018), section 7.11.6; and ANSI/UL 305 (2012). As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

115. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 16

116. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

117. Respondent failed to provide signage to indicate emergency egresses and associated emergency lighting was not readily visible in the main warehouse–combustibles area in accordance with relevant RAGAGEP and industry standards of care that include NFPA 1 (2018), sections 4.4.3.2.1 and 4.4.3.2.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

118. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent release, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 17

119. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

120. Respondent stored incompatible chemicals adjacent to one another in multiple areas of the facility. In the corrosives loading docks, sulfuric acid was stored next to potassium hydroxide (caustic potash 45%) and ammonium hydroxide. In the combustibles area of the main warehouse, nitric acid was stored next to potassium permanganate, ammonium persulfate, and hydrogen peroxide; hydrochloric acid was stored next to aluminum sulfate. These incompatible chemicals were not stored in accordance with relevant RAGAGEP and industry standards of care that include NFPA 400 (2016), sections 6.1.12.1 and 6.1.12.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

121. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 18

122. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

123. Respondent's concrete secondary containment berm enclosing the oxidizer storage area was damaged in several areas that could lead to potential migration of liquid oxidizer outside of the dedicated storage area in the event of releases. The state of disrepair of the concrete secondary containment berm was not in accordance with relevant RAGAGEP and industry standards of care that include NFPA 400 (2016), section 6.2.1.9.2.1. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

124. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 19

125. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth.

126. Respondent failed to label cages located within 25 feet of building doors exterior to the northern building wall of the main warehouse with their contents of the facility's propane cylinders. This inaction was not in accordance with relevant RAGAGEP and industry standards of care that include NFPA 55 (2016), section 7.6.2.5 and NFPA 704 (2017), section 4.1.1. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

127. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 20

128. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

129. Respondent powered permanent electrical equipment in the maintenance garage using extension cords rather than permanent electrical connections and flammables and acids were repackaged in this area, and some chemicals were stored in the area. These actions were not in accordance with relevant RAGAGEP and industry standards of care that include NFPA 400 (2016), section 6.1.8.2.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

130. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 21

131. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

132. Respondent failed to consistently label chemical storage containers throughout the combustibles area in the main warehouse, such that storage container labels did not consistently point outward to notify emergency response personnel of contents in the case of an emergency in accordance with relevant RAGAGEP and industry standards of care that include NFPA 400 (2016), section 6.1.8.2.2. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

133. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 22

134. Paragraphs 1-29, 45-57, and 105-109 are realleged as if fully set forth herein.

135. Respondent failed to provide the top-most rack of materials stored in the southwestern corner of the warm storage area with adequate clearance from ceiling level to allow for proper sprinkler function in the event of a fire in accordance with relevant RAGAGEP and industry standards of care that include NFPA 13 (2016), section 8.5.6.1. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

136. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

BUNOLA FACILITY

137. The Bunola facility manages certain chemicals for warehouse, repackaging, and distribution for its customers. The property includes a large warehouse, a caustic soda tank farm, a corrosives tank farm with blending/filling area, a bleach tank farm with filling area, and a solvent plant and tank farm. The warehouse stores dry products in the main area with drum and liquid storage in the other half of the warehouse.

138. The Bunola facility contains process equipment that produces, processes, handles, stores, or uses anhydrous ammonia, aqueous ammonia (conc. 20% or greater), chlorine and sulfur dioxide, which are RMP regulated substances under section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130, and from which accidental releases may occur.

139. Respondent is an owner and operator of a "stationary source" under section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

140. Respondent produces, processes, handles, stores, or uses anhydrous ammonia in a single process, aqueous ammonia (conc. 20% or greater) in a single process, chlorine in a single process, and sulfur dioxide in a single process at levels greater than their respective threshold quantities as defined in 40 C.F.R. §§ 68.130 and 68.115; thus, these are covered processes as defined in 40 C.F.R. § 68.3.

141. From the time Respondent first had on site greater than a threshold quantity of an RMP regulated substance in a process, Respondent was subject to the requirements of sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and (r)(7)(E), and 40 C.F.R. part 68 because it was the owner and operator of a stationary source that had more than the respective threshold quantities of the RMP regulated substances in the covered processes identified in paragraph 140.

142. Thus, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and to comply with the Program 3 prevention requirements pursuant to 40 C.F.R. § 68.10(i) for the following reasons: 1) The covered process at the facility did not meet the eligibility requirements of Program 1; 2) the facility is specified as NAICS 32511; and 3) it is subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. The Respondent submitted an RMP to EPA on April 5, 2018.

143. In addition to the RMP regulated substances in covered processes listed above, Respondent also produces, processes, handles, stores, or uses isopropanol, which is an extremely hazardous substance within the meaning of section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), and from which an accidental release may occur.

144. As an owner and operator of a stationary source that produces, processes, handles, stores, or uses RMP regulated substances and other extremely hazardous substances, Respondent was, at all times relevant to the allegations herein, also subject to the GDC in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

RMP VIOLATION

Count 23

145. Paragraphs 1-29, 45-57, and 137-144 are realleged as if fully set forth herein.

146. Respondent failed to complete a compilation of written process safety information that included the ventilation system design, to provide adequate ventilation in the chlorine storage rooms associated with a covered process to prevent accumulation of toxic vapors due to chlorine releases from a chlorine storage room cylinder, and to document that the ventilation system design complied with relevant RAGAGEP and industry standards of care that include: NFPA 55 (2005/2013) sections 7.9.2.1, 7.9.2.1.3; 6.4.1; 6.4.2; CGA P-1 2008, section 6.5.2; and IFC chapter 50 (2012/2018) section 5003.8.4.2.

147. Respondent's failure to complete a compilation of written process safety information that included the ventilation system design, to provide adequate ventilation in the chlorine storage rooms associated with a covered process to prevent accumulation of toxic vapors due to chlorine releases from a chlorine storage room cylinder, and to document that the ventilation system design complied with RAGAGEP was a violation of 40 C.F.R. §§ 68.65(d)(1)(v) and/or (d)(2) and/or sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7(E).

GDC VIOLATION

Count 24

148. Paragraphs 1-29, 45-57, and 137-144 are realleged as if fully set forth herein.

149. Respondent failed to utilize the proper metal storage tote for flammable liquids, including isopropanol, located in an outdoor location with proper weather protection in accordance with relevant RAGAGEP and industry standards of care that include NFPA 30 (2008/2012/2015) section 4.3.1. As a result, Respondent failed meet its general duty to design and maintain a safe facility.

150. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

MIDDLETOWN FACILITY

151. The Middletown facility manages chemicals for warehouse, repackaging, and distribution for its customers. Chemical storage is organized into four primary areas: (1) corrosives loading docks, (2) bag storage, (3) main warehouse – combustibles and (4) warm storage area.

152. The Middletown facility contains process equipment that produces, processes, handles, stores, or uses anhydrous ammonia, chlorine, formaldehyde, and sulfur dioxide, which are RMP regulated substances under section 112(r)(3) of the CAA and 40 C.F.R. § 68.130, and from which an accidental release may occur.

153. The Middletown facility is an owner and operator of a "stationary source" under CAA section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

154. Respondent produces, processes, handles, stores, or uses anhydrous ammonia in a single process, chlorine in two separate processes, formaldehyde in a single process, and sulfur dioxide in two separate processes at levels greater than their respective threshold quantities as defined in 40 C.F.R. § 68.115; thus, these processes are covered processes as defined in 40 C.F.R. § 68.3.

155. From the time Respondent first had onsite a greater than a threshold quantity of an RMP regulated substance in a process, Respondent was subject to the requirements of sections 112(r)(7) and (r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7) and (r)(7)(E), and 40 C.F.R. part 68 because it was the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

156. Thus, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and to comply with the Program 3 prevention requirements. Respondent must meet the Program 3 prevention requirements pursuant to 40 C.F.R. § 68.10(i) for the following reasons: 1) The covered process at the facility did not meet the eligibility requirements of Program 1; 2) the facility is specified as NAICS code 32511; and 3) it is subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. The Respondent submitted an RMP to EPA on December 19, 2018.

157. In addition to the RMP regulated substances in covered processes listed above, Respondent also produces, processes, handles, stores, or uses flammable liquids including chlorine, which is an extremely hazardous substance within the meaning of section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), and from which an accidental release may occur.

158. As an owner and operator of a stationary source that produces, processes, handles, stores, or uses RMP regulated substances, and other extremely hazardous substances, Respondent was, at all times relevant to the allegations herein, also subject to the GDC in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

RMP VIOLATION

Count 25

159. Paragraphs 1-29, 45-57, and 151-158 are realleged as if fully set forth herein.

160. Respondent failed to complete a compilation of written process safety information that included the ventilation system design, to document that the ventilation system design

complied with RAGAGEP, and to provide adequate ventilation in the chlorine storage rooms associated with a covered process to prevent accumulation of toxic vapors due to chlorine releases from a chlorine storage room cylinder were not in accordance with relevant RAGAGEP and industry standards of care that include: NFPA 55 (2005/2013) sections 7.9.2.1, 7.9.2.1.3; 6.4.1; 6.4.2; CGAP-1 2008, section 6.5.2; and IFC chapter 50 (2012/2018) section 5003.8.4.2.

161. Respondent's failures to complete a compilation of written process safety information that included the ventilation system design, to document that the ventilation system design complied with RAGAGEP, and to provide adequate ventilation in the chlorine storage rooms associated with a covered process to prevent accumulation of toxic vapors due to chlorine releases from a chlorine storage room cylinder and not complying with RAGAGEP and industry standards of care is a violation of 40 C.F.R. §§ 68.65(d)(1)(v) and/or (d)(2) and/or sections 112(r)(7) and (7)(E) of the CAA, 42 U.S.C. §§ 7412(r)(7) and 7(E).

GDC VIOLATION

Count 26

162. Paragraphs 1-29, 45-57, and 151-158 are realleged as if fully set forth herein.

163. Respondent failed to utilize the proper metal storage tote for flammable liquids, including chlorine, located in an outdoor location with proper weather protection in accordance with relevant RAGAGEP and industry standards of care that include NFPA 30 (2008/2012/2015) section 4.3.1. As a result, Respondent failed meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

164. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

DENVER FACILITY

165. The Denver facility blends, repackages, and distributes chemicals for a variety of uses. The chemicals the Denver facility distributes are handled in several ways. The bulk chemicals can be offloaded from railcars or tanker trucks into atmospheric storage tanks, blended, and/or repackaged. The bulk chemicals are distributed to customers via tank trucks, drums, or totes. Packaged chemicals are either repackaged and/or relabeled or distributed directly to the customers in the original packaging.

166. The Denver facility contains process equipment that produces, processes, handles, stores, or uses extremely hazardous substances, including but not limited to, nitric acid, sulfuric acid, methanol, and potassium hydroxide (caustic potash 45%).

167. Respondent is an owner and operator of a "stationary source" under section112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

168. As an owner and operator of a stationary source that produces, processes, handles, stores, or uses extremely hazardous substances, Respondent was, at all times relevant to the allegations herein, also subject to the GDC in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

GDC COUNTS

Count 27

169. Paragraphs 1-29, 45-57, and 165-168 are realleged as if fully set forth herein.

170. Respondent failed to perform any formal external or internal inspections of the approximately 50 above-ground tanks in service for 23-24 years, which contained nitric acid, sulfuric acid, and methanol, among other chemical substances in accordance with relevant RAGAGEP and industry standards of care that include Univar's Operating Standards Manual (OSM) 3.17 Tank Inspection Program and Steel Tank Institute Standard and American Petroleum Institute Standard 653 Tank Inspection, Repair, Alteration and Reconstruction. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

171. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 28

172. Paragraphs 1-29, 45-57, and 165-168 are realleged as if fully set forth herein.

173. Respondent failed to maintain records confirming monthly and annual tank inspections were performed on tanks that included nitric acid, sulfuric acid and methanol, and to keep the records on site for three years in accordance with relevant RAGAGEP and industry standards of care that include Univar's OSM 3.17 Tank Inspection Program. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

174. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 29

175. Paragraphs 1-29, 45-57, and 165-168 are realleged as if fully set forth herein.

176. Respondent failed to maintain labeling on a storage tank that contained potassium hydroxide (caustic potash 45%) in accordance with relevant RAGAGEP and industry standards of care that include Univar's OSM 3.17 Tank Inspection Program. As a result,

Respondent failed to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

177. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 30

178. Paragraphs 1-29, 45-57, and 165-168 are realleged as if fully set forth herein.

179. Respondent failed to inspect and provide documentation that monthly inspections of fixed piping, valves and flexible hoses containing nitric acid, sulfuric acid and methanol, among other chemical substances, were performed in 2016 and 2017 in accordance with relevant RAGAGEP and industry standards of care that include Univar OMS 3.20 Repacking, Personal & Environmental Safety Procedure. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

180. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 31

181. Paragraphs 1-29, 45-57, and 165-168 are realleged as if fully set forth herein.

182. Responded failed to ensure annual pressure testing of flexible hoses containing nitric acid, sulfuric acid and methanol, among other chemical substances in accordance with relevant RAGAGEP and industry standards of care that include Univar OMS 3.20 Repacking, Personal & Environmental Safety Procedure. As a result, Respondent failed to meet its general duty to design and maintain a safe facility.

183. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of the GDC of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

EPA FINDINGS OF EPCRA SECTION 313 VIOLATIONS

184. At all times relevant to this matter, Respondent owned and operated, and continues to own and operate, a facility, as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 CFR § 372.3, located at 4300 Holly Street, in Denver, Colorado 80216.

185. At all times relevant to this matter, the Denver facility had 10 or more full-time employees, as that term is defined at 40 C.F.R. § 372.3.

186. At all times relevant to this matter, the Denver facility was in NAICS 424690, which is a

listed SIC/NAICS code in 40 C.F.R. § 372.23.

187. Ethylene glycol, methanol, nitric acid, 1,2,4-trimethylbenzene, naphthalene, and formic acid are "toxic chemicals" listed under 40 C.F.R § 372.65.

188. The threshold for reporting "processed" ethylene glycol, methanol, nitric acid, 1,2,4trimethylbenzene, naphthalene, and formic acid at the facility is 25,000 pounds for each toxic chemical, as established under section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R § 372.25.

189. During the reporting year 2015, Respondent "processed," as that term is defined in 40 C.F.R. § 372.3, over 25,000 pounds each of ethylene glycol, methanol, nitric acid, 1,2,4-trimethylbenzene, naphthalene, and formic acid at the facility.

190. As a person, and owner and operator of a facility with 10 or more full-time employees in a covered SIC/NAICs code, processing more than the 25,000 pounds of TRI-covered toxic chemicals of ethylene glycol, methanol, nitric acid, 1,2,4-trimethylbenzene, naphthalene, and formic acid at the facility, Respondent was subject to section 313 of EPCRA and its implementing regulations.

191. EPA notified the Respondent of an upcoming inspection on March 21, 2018, and requested the Respondent have calculations and supporting documents used to determine threshold quantities, releases, transfers, and waste management for TRI chemicals for each reporting year being reviewed, including reporting year 2015, as required by 40 C.F.R. § 372.10.

192. Respondent received this inspection notification on March 2, 2018, as noted on the certified mail return receipt.

193. EPA inspected the facility on March 21, 2018, and requested the records related to the Respondent's submissions of the 2015 TRI Forms R and Forms A for ethylene glycol, methanol, nitric acid, 1,2,4-trimethylbenzene, naphthalene, and formic acid.

194. The only document the Respondent supplied to EPA was sent several months after the inspection. On June 11, 2020, the Respondent supplied a half-page document titled "TRI Report 2015 Master Data Table" that included a summary number of the pounds processed for ethylene glycol, methanol, nitric acid, 1,2,4-trimethylbenzene, and pounds otherwise used for formic acid without any of the required underlying documentation.

195. Complainant hereby states and alleges that Respondent has violated section 313 of EPCRA and its federal regulations promulgated thereunder as follows.

DENVER FACILITY

Counts 32-34

196. Paragraphs 1-7, 30-48, and 184-195 are realleged as if fully set forth herein.

197. Respondent timely filed separate Form Rs for ethylene glycol, methanol, and nitric acid for reporting year 2015 on June 22, 2016.

198. Respondent was unable to provide any of the requested records to the inspector on March 21, 2018, the date of the inspection, for reporting year 2015 for ethylene glycol, methanol, and nitric acid.

199. Respondent failed to retain complete records for ethylene glycol, methanol, and nitric acid for a period of three years from the date of submission of its Form R reports under 40 C.F.R. § 372.30 as required by section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.10(a).

200. Respondent failed to maintain such retained records at the facility to which the reports applied and failed to make such records readily available for purposes of inspection by EPA as required by section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §372.10(c).

201. Respondent's failure to retain complete records for ethylene glycol, methanol, and nitric acid for a period of three years from the date of submission of its reports under 40 C.F.R § 372.30, to maintain such retained records at the facility to which the reports applied, and to make such records readily available for purposes of inspection by EPA for ethylene glycol, methanol, and nitric acid constitutes three violations of section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.10(a) and (c).

Counts 35–37

202. Paragraphs 1-7, 30-48, and 184-195 are realleged as if fully set forth herein.

203. Respondent timely filed separate Form As for 1,2,4-trimethylbenzene, naphthalene and formic acid for reporting year 2015 on June 22, 2016.

204. Respondent was unable to provide any of the requested records to the inspector on March 21, 2018, the date of the inspection, for reporting year 2015 for 1,2,4-trimethylbenzene, naphthalene and formic acid.

205. Respondent failed to retain complete records for 1,2,4-trimethylbenzene, naphthalene and formic acid for a period of three years from the date of submission of its Form R reports under 40 C.F.R § 372.30 as required by section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.10(d).

206. Respondent failed to maintain such retained records at the facility to which the Form A

applies and to make such records readily available for purposes of inspection by EPA as required by section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.10(c).

207. Respondent's failure to retain complete 1,2,4-trimethylbenzene records, naphthalene and formic acid for a period of three years from the date of submission of the Form A reports under 40 C.F.R § 372.30, Respondent's failure to maintain such retained records for 1,2,4-trimethylbenzene, naphthalene and formic acid at the facility to which the reports apply, and to make such records for 1,2,4-trimethylbenzene, naphthalene and formic acid readily available for purposes of inspection by EPA constitutes three violations of section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.10(d) and (c).

Penalty Payment

208. Respondent agrees that in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Six Hundred Thousand Dollars ($600,000) as set forth below.

209. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall

Either:

210. Dispatch a cashier's or certified check in the amount of Six Hundred Thousand Dollars ($600,000) made payable to the order of the "Treasurer of the United States of America," and bearing the case docket numbers CAA-HQ-2022-5005 and EPCRA-HQ-2022-5005, to the following address:

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

Or

211. Effect a wire transfer in the amount of Six Hundred Thousand Dollars ($600,000) with the notation "Univar Solutions USA Inc., Civil Penalty Docket Numbers CAA-HQ-2022-5005 and EPCRA-HQ-2022-5005," by using the following instructions:

Federal Reserve Bank of New York
ABA = 02103000
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

[Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."]

212. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Philip Milton, Chemical Engineer
Waste and Chemical Enforcement Division (2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-5029

Or as a PDF attachment in an email to: milton.philip@epa.gov

213. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

214. Respondent must implement an agreed-to Supplemental Environmental Project (SEP) in accordance with all provisions of this Consent Agreement and the schedule set forth in Appendix A.

215. In implementing the SEP, Respondent shall provide the emergency response equipment specified in Appendix A to the identified emergency response organizations to assist them in responding to emergencies in the communities where Respondent operates and where chemical processes are undertaken that are regulated by the CAA and EPCRA. The parties agree that the SEP is consistent with EPA's 2015 SEP Policy and is intended to secure significant environmental and public health protection and benefits by enhancing the hazardous material incident response capabilities of first responders in the areas by providing equipment and training that is necessary to respond to emergency releases of hazardous chemicals. Respondent is obligated to expend no less than Two Hundred Thousand dollars ($200,000) associated with implementing the SEP which Respondent has chosen, and costs incurred by contractors and other third-parties selected by Respondent to develop, implement, maintain and administer the SEP.

216. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement. "Satisfactory completion" means completing the SEP in accordance with the requirements and schedules set forth in Appendix A. Respondent may use contractors or consultants in planning and implementing the SEP.

217. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. All cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and Respondent, in good faith, estimates the cost to implement the SEP is Two Hundred Thousand Dollars ($200,000).

b. As of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

d. Respondent has not received and will not receive credit for the SEP in any other enforcement action.

e. Respondent will not receive any reimbursement for any portion of the SEP from any other person.

f. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

g. Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

h. Respondent has inquired of the SEP recipients whether each is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by each of the SEP recipients that it is not a party to such a transaction.

218. For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

219. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to EPA and the DOJ and solely for the purpose of ensuring the accuracy of Respondent’s SEP cost certification.

220. Respondent shall send a confirmation email to EPA within ten (10) days of completing the purchase of the emergency equipment for the SEP recipients. Within thirty (30) days

after completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented,

b. a description of any material problems encountered in completing the SEP and the solutions thereto;

c. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, and/or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;

d. certification that each SEP has been fully implemented pursuant to the provisions of this CAFO; and

e. a description of the environmental and public health benefits resulting from the implementation of the SEP;

f. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEPs; and

g. the following statement, signed by Respondent's officer or authorized representative of Respondent with knowledge of the SEP, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

221. Respondent shall maintain, for a period of three (3) years from the date of submission of the SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Report and shall provide such documentation within fourteen (14) days of a request from EPA.

222. Respondent agrees that failure to submit the confirmation email and/or the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall become liable for stipulated penalties in accordance with paragraph 232.

223. After receipt of the SEP Completion Report, EPA, after a reasonable opportunity for review, will notify Respondent in writing: (i) the project has been completed

satisfactorily; (ii) identify any deficiencies in the SEP Completion Report itself and grant Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determine the project has not been completed satisfactorily.

224. If EPA elects to exercise options (ii) or (iii) in paragraph 223 above, Respondent may object in writing to the notice of deficiency within ten (10) days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, which may be extended by the written agreement of both EPA and Respondent, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO.

225. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, its contractors, or third party implementers making reference to a SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, ***In the Matter of Univar Solutions USA Inc.,*** taken by the U.S. Environmental Protection Agency to enforce federal environmental laws."

226. If Respondent's purchase of the emergency response equipment identified in Appendix A does not expend the full amount set forth in paragraph 217, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase and provide additional emergency response equipment to one or more of the emergency response organizations identified in Appendix A.

Notifications

227. Submissions required by this SEP Agreement shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

Philip L. Milton, Chemical Engineer
U.S. Environmental Protection Agency
Waste and Chemical Enforcement Division
1200 Pennsylvania Avenue, NW, Mail Code: 2249A
(WJC South Bldg. Rm 3151-E)
Washington, DC 20460

Milton.Philip@epa.gov
Phone: 202-564-5029
Fax: 202-564-0010

228. EPA will send all written communications, including electronic mail, to the following representative(s) for Respondent:

Julie Halperin – V.P. - Assistant General Counsel
Univar Solutions USA Inc.
3075 Highland Parkway, Suite 200
Downers Grove, IL 60515

julie.halperin@UnivarsSolutions.com
Phone: 331-777-6185
Fax: (425) 889-4136

229. All documents submitted to EPA in the course of implementing this SEP Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. part 2 subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

Stipulated Penalties

230. In the event that Respondent fails to satisfactorily complete the SEP as outlined above in paragraphs 214-229 and Appendix A, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

231. If EPA determines that Respondent completely or substantially failed to implement the Purchase of Emergency Equipment SEP in accordance with this Agreement, Respondent shall pay a stipulated penalty in the amount of 110% of the estimated cost for each such project, as set forth in Appendix A.

232. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of Two Hundred Dollars ($200) for each day the following submissions are late: (a) each email message and (b) the SEP Completion Report required by paragraph 220.

Force Majeure and Excusable Delay

233. "Force majeure and excusable delay," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any obligation under this Consent Agreement despite Respondent's best efforts to fulfill the obligation. Excusable delay in this CAFO specifically occurs in reference to supply chain issues or lack of product availability in connection with the SEP when Respondent has ordered the emergency equipment within the sixty-day (60) time frame from the Effective Date specified in Appendix A. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure or excusable delay event and best efforts to address the effects of any potential

force majeure or excusable delay event (a) as it is occurring and (b) following the potential force majeure or excusable delay, such that the delay and any adverse effects of the delay are minimized. "Force majeure or excusable delay" does not include Respondent's financial inability to perform any obligation under this Consent Agreement.

234. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Agreement, as to which Respondent intends to assert a claim of force majeure or excusable delay, Respondent will provide notice orally or by electronic transmission to EPA within ten (10) days of when Respondent first knew, or by the exercise of due diligence should have known, that the event would cause a delay. Within thirty (30) days thereafter, Respondent will provide in writing to EPA: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to force majeure or excusable delay; and a statement as to whether, in the opinion of Respondent, the delay in performance of an obligation under this Consent Agreement resulting from such event may cause or contribute to an endangerment to public health, welfare, or the environment (30-Day Force Majeure or Excusable Delay Notice). Respondent will include with any 30-Day Force Majeure or Excusable Delay Notice documentation supporting the claim that the delay was attributable to force majeure or excusable delay. Failure to substantially comply with the above requirements will preclude Respondent from asserting any claim of force majeure or excusable delay for that event for the period of time in which Respondent has failed to comply with the notice requirements, and for any additional delay caused by such failure. Respondent will be deemed to know of any circumstances of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

235. If EPA, after a reasonable opportunity for review, agrees that the delay or anticipated delay is attributable to force majeure or excusable delay, it will notify Respondent in writing, and the time for performance of the obligations under this Consent Agreement that are affected by force majeure or excusable delay will be extended by EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by force majeure or excusable delay will not, of itself, extend the time for performance of any other obligation. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by force majeure or excusable delay.

236. If EPA, after a reasonable opportunity for review if applicable, does not agree that the delay or anticipated delay has been or will be caused by force majeure or excusable delay, EPA will notify Respondent in writing of its decision. If EPA does not provide a response within thirty (30) days after receipt of Respondent's 30-Day Force Majeure or Excusable Delay Notice, Respondent will treat the absence of a response as a denial of the 30-Day Force Majeure or Excusable Delay Notice.

Enhanced Compliance Project

237. To ensure enhanced compliance, Respondent certifies it has started design work to reconfigure storage of incompatible chemicals at the Harborside and Terminal Road facilities. In both instances, the process of completing design, obtaining permits, and completing construction may take 2-3 years.

Effect of Settlement and Reservation of Rights

238. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA, EPCRA, or any other applicable law.

239. The effect of settlement described in paragraph 238 is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph 240.

240. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and section 313 of the EPCRA, 42 U.S.C § 11023, related to the counts set forth in this Consent Agreement, as qualified by subparagraphs a-b, below.

    a. Respondent certifies certain flange repairs will be completed at the Denver Facility within 60 days of the effective date of the Final Order.
    b. Pursuant to EPA's information request authority in 42 U.S.C. § 7414, within 60 days of the effective date of this CAFO, Respondent shall update EPA at milton.philip@epa.gov with the results of the work described in subparagraph (a) above.

241. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and the EPCRA and regulations promulgated thereunder.

242. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

243. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

244. This Consent Agreement shall not dispose of the proceeding without a Final Order from the Environmental Appeals Board ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the U.S. EPA Environmental Appeals Board. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

245. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state, and local taxes.

246. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

247. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA:

clark.katherine@epa.gov
milton.philip@epa.gov

To Respondent :
julie.halperin@UnivarSolutions.com

In the Matter of Univar Solutions USA Inc.
Docket Nos. CAA-HQ-2022-5005 and EPCRA-HQ-2022-5005

RESPONDENT:

UNIVAR SOLUTIONS USA INC.

Date: 11/23/2022

Julie Halperin
V.P. – Assistant General Counsel
Univar Solutions USA Inc.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

GREGORY SULLIVAN Digitally signed by GREGORY SULLIVAN
Date: 2022.11.29 11:40:15 -05'00'

Gregory Sullivan
Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. EPA

Date: _____

KATHERINE CLARK Digitally signed by KATHERINE CLARK
Date: 2022.11.28 17:33:17 -05'00'

Katherine M. Clark
Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. EPA

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Project Description – Overview

This Supplemental Environmental Project (SEP) consists of emergency response equipment to be purchased and donated by Univar Solutions USA Inc. (Univar Solutions) to emergency response organizations local to Univar Solutions facilities. Univar Solutions has selected the Denver Fire Department in Colorado and the Bunola Fire Department in Pennsylvania to own and use the donated equipment. Univar Solutions will order the equipment described below within sixty (60) days following the Effective Date. Dependent on supplier capabilities, Univar Solutions expects delivery within a reasonable time after the orders are placed. The SEP will be considered complete when each piece of equipment described below, or substantially similar equipment in the event the equipment listed below is not available, is delivered to the Denver and Bunola Fire Departments. If necessary due to product availability or supply chain issues, substantially similar equipment will be purchased by Univar Solutions after consultation with the impacted fire department. Univar Solutions shall complete this SEP no later than six (6) months after the Effective Date.

Respondent alone selected the SEP recipients and specific equipment identified herein. This CAFO shall not be construed to constitute EPA approval or endorsement of the equipment or technology donated by Respondent in connection with the SEP undertaken pursuant to this Agreement.

A. Nexus to the Clean Air Act (CAA), Section 112(r), and the Emergency Planning and Community Right-to- Know Act (EPCRA), Section 313

This SEP enhances the capabilities of emergency responders, facilitates quick and efficient responses to actual and threatened releases associated with emergency events, and provides tangible environmental and public health benefits primarily for local communities located near Univar Solutions' facilities. Adequate nexus is deemed to exist between this SEP and alleged violations of section 112(r) of the CAA and section 113 of EPCRA as set forth in the Complaint in accordance with Category G (Emergency Planning and Preparedness) of EPA's SEP Policy (2015 Update to the 1998 SEP Policy). SEP Category G furthers the ability of emergency response organizations to assess the dangers of hazardous chemicals that are present, develop emergency response plans to better respond to chemical incidents, and fulfill their obligations under EPCRA and the CAA within the same emergency planning district or state affected by the alleged violations and for which no federal financial assistance is available for the purchased materials funded by this SEP.

B. Nexus to Communities with Environmental Justice Concerns

The EPA has identified Colorado's Commerce City – North Denver area as an environmental justice community whose residents are overburdened by environmental pollution. The community is located next to major highways, large numbers of regulated facilities, and areas with legacy pollution, leading community members to express continued concerns about their

health, environment, and community. Data from the EPA 's Environmental Justice (EJ) screening and mapping tool EJScreen suggest a significant potential for EJ concerns in the area due to a combination of high pollution burden and population vulnerability. This SEP will mitigate potential damage or reduce potential risks to local communities in with environmental justice concerns in the Commerce City – North Denver area.

C. Planned Purchases by Location

The following describes the purchase of emergency response equipment Respondent has chosen to make for the Denver and Bunola Fire Departments.

1. Description of Project -- Denver Fire Department

The listed emergency response equipment, selected by Respondent in consultation with the Denver Fire Department, will be purchased for the Denver Fire Department.*

Description	Quantity	Unit Cost	Subtotal	Grand Total
Kappler DuraChem® 500 NFPA Multi-Threat Hazmat Protection Suits				
Small/Medium	6	$1,136.39	$6,818.34	
Large/Extra Large	12	$1,136.39	$13,636.68	
XXL/XXXL	6	$1,250.03	$7,500.18	
Pressure Test Adapter	1	$362.73	$362.73	$28,317.93
Kappler Zytron® 500 Level A Chemical Protection Suits				
Small/Medium	4	$961.84	$3,847.36	
Large/Extra Large	10	$961.84	$9,618.40	
XXL/XXXL	4	$1,058.0	$4,232.12	$17,697.88
Miscellaneous				
ERK Multi-Purpose Railcar Kit	1	$8,932.69	$8,932.69	
ECA2 – Oversized Surface Plug Kit	1	$296	$296	
Teledyne FLIR Griffin™ G510 Field Ready Kit – Portable Gas Chromatograph/Mass Spectrometer (GC/MS) with integrated Heated Sample Probe and Liquid Injector	1	$137,475	$137,475	
Kit-B Conversion Package Dev12	1	$1,196	$1,196	
"OFFSET" Drum Patching & Plugging Kit with Ladder Patch and Twin T-Patch Non-Sparking	1	$1,188	$1,188	$151,970
Grand Total				**$195,103.50**

* Any applicable tax to be paid will be in addition to the amounts noted in these charts.

2. Description of Project -- Bunola Fire Department

The listed emergency response equipment selected by Respondent in consultation with the Bunola Fire Department, will be purchased for the Bunola Fire Department.*

Description	Quantity	Unit Cost	Subtotal	Grand Total
DJI Aerial Drone				
Mavic 3 Cine Premium Combo	1	$4,999	$4,999	$5,598 *plus tax*
Care Refresh 2-Year Plan	1	$599	$599	
Grand Total				**$5,598** *plus tax*

* Any applicable tax to be paid will be in addition to the amounts noted in these charts.

GRAND TOTAL SEP EQUIPMENT COST (EXCLUDING TAX): Approximately $200,000.

IN THE MATTER OF:		
Univar Solutions USA Inc.	**Docket No.**	**CAA-HQ-2022-5005** **EPCRA-HQ-2022-5005**
Respondent		

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)–(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered[3]

ENVIRONMENTAL APPEALS BOARD

Dated:_____ By: _____

[3] The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Univar Solutions USA Inc., Docket No. CAA-HQ-2022-5005 and EPCRA-HQ-5005 were sent to the following persons in the manner indicated:

By E-mail:
Julie Halperin, V.P – Assistant General Counsel
Univar Solutions USA Inc.
3075 Highland Pkwy Ste 200
Downers Grove, IL, 60515-5560
Email: julie.halperin@UnivarSolutions
Direct Dial: (331) 777-6185

Katherine M. Clark, Attorney
Philip Milton, Chemical Engineer
U.S. Environmental Protection Agency
Waste and Chemical Enforcement Division
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Email: clark.katherine @epa.gov
Email: milton.philip@epa.gov
Direct Dial: (202) 564-4164
Direct Dial: (202) 564-5029

Dated: _____

_____
Emilio Cortes
Clerk of the Board

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of *Univar Solutions USA Inc.*, Docket Nos. CAA-HQ-2022-5005 & EPCRA-HQ-2022-5005, were sent to the following persons in the manner indicated:

By Email:

Julie Halperin, V.P – Assistant General Counsel
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Direct Dial: (202) 564-5029

Dated: Dec 21, 2022

Emilio Cortes

Emilio Cortes
Clerk of the Board