



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

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 REGION III
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In the Matter of:)	US EPA Docket No.: EPCRA-03-2016-0164
)	
)	
Univar USA, Inc.)	
3075 Highland Parkway, Suite 200)	
Downers Grove, IL 60515,)	
)	
Respondent.)	Proceedings Pursuant to Sections 304, 312,
)	and 325 of the Emergency Planning and
)	Community Right-to-Know Act,
Univar USA, Inc.)	42 U.S.C. §§ 11004, 11022, and 11045
5 Steel Road East)	
Morrisville, PA 19067,)	
)	
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated this authority to the Director of the Hazardous Site Cleanup Division, EPA Region III (“Complainant”). Further, this Consent Agreement is proposed and entered into under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CAFO”) as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.1(a)(8), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement or the Final Order, or enforcement of this CAFO.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FACTUAL ALLEGATIONS

5. Univar USA, Inc. (“Respondent”) is a Washington corporation with its headquarters located at 3075 Highland Parkway, Suite 200, Downers Grove, IL 60515.
6. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.
7. In 2010, Respondent acquired a facility located at 5 Steel Road East, Morrisville, PA 19067 (“the Facility”), which is utilized for the Respondent’s chemical distribution business.
8. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.
9. At all times relevant to this CAFO, Respondent has been the “owner or operator” of the Facility within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.2 and 40 C.F.R. § 370.2.
10. On June 8, 2015, EPA conducted an inspection of the Facility to ascertain Univar’s compliance with the emergency response requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and the emergency planning and community right-to-know requirements of Sections 302, 303, 311 and 312 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11021, 11022 (“the Inspection”) in response to a release of sulfuric acid that was reported to have occurred at the Facility on May 16, 2014. During the Inspection, Respondent submitted information to EPA regarding its compliance with CERCLA and EPCRA.

COUNT I
FINDING OF FACT RELATING TO THE
VIOLATION OF SECTION 304(a) and (b) of EPCRA

11. The findings of fact contained in Paragraphs 5 through 10 of this CAFO are incorporated

by reference herein as though fully set forth at length.

12. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c) (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

13. Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, require, in relevant part, the owner or operator of a facility to immediately notify the State Emergency Response Commission (“SERC”) as soon as he/she has knowledge of a release of an EHS in a quantity equal to or exceeding the RQ.

14. The SERC for providing notice pursuant to the emergency response requirements of Section 304 of EPCRA, 42 U.S.C. § 11004, at the Facility is, and at all times relevant to this CAFO has been, the Pennsylvania Emergency Management Agency (“PEMA”), located at 2605 Interstate Drive, Harrisburg, PA 17110.

15. Sulfuric acid, Chemical Abstracts Service (“CAS”) Registry No. 7664-93-9, is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 1,000 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

16. According to information provided during and after the Inspection, an estimated 2,300 pounds of sulfuric acid were released from the Facility on May 16, 2014 (“the Release”).

17. Based upon the Respondent’s statements during the Inspection and supporting documentation provided regarding the Release, the following events occurred:

a. The Release began at approximately 10:35 a.m. on May 16, 2014, while a Univar operator was unloading a railcar, which contained 187,896 pounds of 93% sulfuric acid. A load line from the railcar to the loading bridge ruptured, spraying sulfuric acid onto the rail spur and nearby grassy area, as well as a fence, a parked crane, and a grassy area in an adjacent property.

b. The Univar operator immediately observed the Release, called for assistance from other employees, and isolated the ruptured load line. The Release was terminated between 10:38 a.m. and 10:40 a.m. on May 16, 2014.

c. By 10:45 a.m., Respondent had initiated emergency response activities on-site at the Facility and at the adjacent property, and commenced calculations of the Release quantity.

d. At 12:08 p.m., Respondent completed the Release calculations and determined that an estimated 2,300 pounds of sulfuric acid had been released from the Facility.

18. The Release required immediate notification to the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

19. Respondent did not notify the SERC of the Release.

20. Respondent failed to immediately notify the SERC of the Release as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

21. Respondent’s failure to immediately notify the SERC of the Release is a violation of Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT II
FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 304(c) OF EPCRA**

22. The findings of fact contained in Paragraphs 5 through 21 of this CAFO are incorporated by reference herein as though fully set forth at length.

23. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, and the release requires immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must provide a written follow-up emergency notice regarding the release to the SERC as soon as practicable.

24. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Consequently, the owner or operator was required to provide a written follow-up emergency notice to the SERC as soon as practicable, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

25. Respondent did not provide a written follow-up report regarding the Release to the SERC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

26. Respondent’s failure to submit a follow-up report to the SERC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

COUNT III
FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2012

27. The factual allegations contained in Paragraphs 5 through 26 of this CAFO are incorporated by reference herein as though fully set forth at length.

28. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet for a hazardous chemical in accordance with OSHA’s Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level (“MTL”) or threshold planning quantity (“TPQ”) to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

29. The SERC for complying with the emergency planning and community right-to-know requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at the Facility is the Department of Labor & Industry, Bureau of Occupational & Industrial Safety, Pennsafe Program (“Pennsafe”), located at 651 Boas Street, Harrisburg, PA 17121.

30. Blend AB Brewery 10.1.3 Univar (GHS), Blend Atlas Bisulfite, and Blend Caustic Soda Brewing SA (GHS) are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and are subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

31. Pursuant to 40 C.F.R. § 370.10, the MTLs for Blend AB Brewery 10.1.3 Univar (GHS), Blend Atlas Bisulfite, and Blend Caustic Soda Brewing SA (GHS) are all 10,000 pounds.

32. According to the information submitted to EPA by Respondent, Respondent had Blend AB Brewery 10.1.3 Univar (GHS), Blend Atlas Bisulfite, and Blend Caustic Soda Brewing SA (GHS) present at the Facility during the 2012 calendar year in amounts that exceeded their respective MTLs, as set forth below:

Chemical	Maximum on Hand (lbs)
Blend AB Brewery 10.1.3 Univar (GHS)	97,020
Blend Atlas Bisulfite	44,500
Blend Caustic Soda Brewing SA (GHS)	93,940

33. The three chemicals listed in Paragraph 32 above, Blend AB Brewery 10.1.3 Univar (GHS), Blend Atlas Bisulfite, and Blend Caustic Soda Brewing SA (GHS), were not listed in Respondent’s Chemical Inventory Form for calendar year 2012 for the Facility.

34. Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2012 identifying the total quantity of Blend AB Brewery 10.1.3 Univar (GHS), Blend Atlas Bisulfite, and Blend Caustic Soda Brewing SA (GHS) present at the Facility during the calendar year.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2012**

35. Respondent's failure to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2012 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

SETTLEMENT

36. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violations of Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022, set forth above, in the amount of **\$18,061.00**.

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

PAYMENT TERMS

38. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the EPCRA civil penalty of \$18,061.00 no later than thirty (30) days after the effective date of the Final Order (the "Final Due Date") by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

39. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2016-0164**;
- b. All checks shall be made payable to **United States Treasury**;

- c. All payments made by check and sent by regular mail shall be addressed to:

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

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

U.S. EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

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

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

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

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

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

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Randolph Maxwell 202-874-3720
or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

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

40. Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

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

and

Lauren E. Ziegler (3RC42)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

41. The EPCRA civil penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

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

43. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not

seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

44. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

45. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

46. Failure by Respondent to pay the EPCRA civil penalty assessed by the Final Order in full by the Final Due Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

47. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

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

49. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

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

FOR UNIVAR USA, INC.



Signature

9/27/2016

DATE

Katie Birge

Print Name

Director Environmental Compliance

Title

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director
Hazardous Site Cleanup Division

SEP 28 2016

DATE

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION III

In the Matter of:)	
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Univar USA, Inc.)	42 U.S.C. §§ 11004, 11022, and 11045
5 Steel Road East)	
Morrisville, PA 19067,)	
)	
Facility.)	
)	

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Univar USA, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.


Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and the statutory factors set forth in Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

NOW, THEREFORE, PURSUANT TO Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of *EIGHTEEN THOUSAND AND SIXTY-ONE*

DOLLARS (\$18,061), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 29, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA, Region III

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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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5 Steel Road East)
Morrisville, PA 19067,)
)
Facility.)
)

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by UPS overnight mail to:

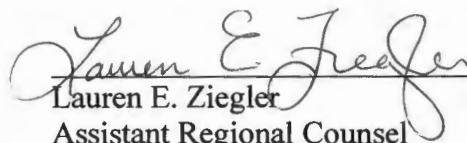
Mr. Scott Heath
Regional Regulatory Manager
East Region
Univar USA, Inc.
5 Steel Road East
Morrisville, PA 19067

and

Ms. Kaz Takeuchi
Litigation & Claims
Legal & Corporate Affairs
Univar USA, Inc.
17411 NE Union Hill Road
Redmond, WA 98124-6518

I further certify that I have sent a pdf copy of the CAFO by electronic pdf to Scott Heath, at Scott.Heath@univarusa.com, and to Kaz Takeuchi, at Kaz.Takeuchi@univarcorp.com, on this day.

9/29/16
Date


Lauren E. Ziegler
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III