



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

MAR 04 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL #7009 1680 0000 7648 7931
RETURN RECEIPT REQUESTED

Mr. Ronald Lehman
Novacare, Business Unit Leader
Solvay USA Inc.
24601 Governors Highway
University Park, Illinois 60484

Re: Consent Agreement and Final Order
Solvay USA Inc.
Docket No: **RCRA-05-2016-0007**

Dear Mr. Lehman:

Enclosed please find a copy of the signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on March 4, 2016, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$200,000 in the manner prescribed in paragraph 79 of the CAFO, and reference all checks with the docket number **RCRA-05-2016-0007**. Your payment is due within 30 calendar days of the effective date of the CAFO. Please execute the two supplemental environmental projects described in paragraph 82 of the CAFO in the manner prescribed in paragraphs 83 through 98 of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*. Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Gary J. Victorine".

Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Todd Marvel, Illinois EPA, (todd.marvel@illinois.gov)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Solvay USA Inc.,
University Park, Illinois,

Respondent.



Docket No. RCRA-05-2016-0007

Proceeding to Assess a Civil Penalty
Under Section 3008(a) of the Resource
Conservation and Recovery Act,
42 U.S.C. § 6928(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. U.S. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Respondent is Solvay USA Inc., a corporation doing business in the State of Illinois at a facility located in University Park (the "UP Facility").
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Section 3008 of RCRA; 42 U.S.C. § 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that the UP Facility is complying fully with RCRA and the regulations promulgated thereunder.

Statutory and Regulatory Background

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to sections 3002, 3003, and 3004, of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA,

constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 30, 1986).

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

16. Respondent is, and was at all times relevant to this CAFO, a corporation.

17. Respondent, therefore, is, and was, a "person" as defined by 35 IAC § 720.110, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent operates, and operated at all times relevant to this CAFO, the UP Facility.

19. Respondent, therefore, is, and was, an "owner" or "operator," as those terms are

defined under 35 IAC § 720.110.

20. At all times relevant to this CAFO, Respondent's UP Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

21. Respondent's UP Facility, therefore, is, and was, a "facility," as that term is defined under 35 IAC § 720.110.

22. At all times relevant to this CAFO, Respondent generated, collected in containers and stored in the hazardous waste storage area, also known as its hazardous waste accumulation area, of the UP Facility:

a. Waste flammable liquids of various types that met the D001 ignitable hazardous waste characteristic, including but not limited to waste or waste containing isopropyl alcohol (IPA), methanol, morpholine, and ethanol.

b. Waste flammable liquids of various types that met the D002 corrosivity hazardous waste characteristic, including but not limited to waste or waste containing alkylamines, monoethanolamine, sulfuric acid, and amines.

c. Wastes that either consisted of or included materials that met the criteria for lead toxicity (D008), silver toxicity (D011) chloroform toxicity (D022), pyridine toxicity (D038), non-specific source (F003), benzyl chloride (P028), acetone ignitability (U002), or epichlorohydrin (U041).

23. Respondent, therefore, generates, and generated at all times relative to this CAFO, "solid waste" as that term is defined under 35 IAC § 720.102.

24. At all times relevant to this CAFO, Respondent held the wastes listed in paragraph 22 for temporary periods in 55-gallon containers or 550-gallon totes before the material was

shipped from the UP Facility for treatment, storage, disposal, burning or incineration elsewhere.

25. Respondent, therefore, stored, transported, disposed of, or otherwise handled its wastes in “containers” as that term is defined under 35 IAC § 720.110.

26. At all times relevant to this CAFO, Respondent’s wastes identified in paragraph 22 were “solid waste” as that term is defined under 35 IAC § 720.102.

27. At all times relevant to this CAFO, Respondent’s wastes identified in paragraph 22 were a “hazardous waste” as that term is defined under 35 IAC § 720.103.

28. On or about October 10, 2013, Respondent submitted a Hazardous Waste Notification to the Illinois Environmental Protection Agency (IEPA) for the UP Facility.

29. In its Hazardous Waste Notification referred to in paragraph 28, Respondent identified itself as a generator of hazardous waste.

30. Respondent is, and was at all times relevant to this CAFO, a “generator,” as that term is defined under 35 IAC § 720.110.

31. At all times relevant to this CAFO, Respondent generated during each calendar month more than 1000 kilograms (kg) of hazardous waste at the UP Facility.

32. Respondent generated and managed hazardous waste at the UP Facility after November 19, 1980.

33. At all times relevant to this CAFO, Respondent’s holding of wastes identified in paragraph 22 in 55-gallon containers or 550-gallon totes constituted hazardous waste “storage,” as that term is defined under 35 IAC § 720.110.

34. At all times relevant to this CAFO, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its UP Facility.

35. At all times relevant to this CAFO, Respondent did not have interim status for the

treatment, storage, or disposal of hazardous waste at its UP Facility.

36. On April 29, 2014, the IEPA conducted a Compliance Evaluation Inspection of the UP Facility (the IEPA inspection).

37. The IEPA inspector, Mr. James Haennicke, prepared a narrative based on the IEPA inspection. In the narrative, Mr. Haennicke recorded that Respondent:

a. Did not maintain adequate aisle space; that the lack of aisle space limited the inspector's ability to determine the amount of waste on site and whether or not all containers were properly labeled and dated.

b. Stored numerous containers of hazardous waste that were visible to the inspector and were not marked or labeled with the words, "Hazardous Waste."

c. Stored numerous containers of hazardous waste that were visible to the inspector and were not marked or labeled with the hazardous waste accumulation start date.

d. Stored several containers of hazardous waste that had accumulation start dates that were more than 90 days old.

e. Failed to conduct weekly inspections of this area.

f. Stored eighteen 550-gallon totes of methanol/amine on site that were hazardous waste and that some of the containers were not marked with accumulation start dates.

g. Stored five 55-gallon containers of spent carbon on site without being labeled or marked with the words, "Hazardous Waste" and without being marked with an accumulation start date.

h. Stored several containers of laboratory waste both inside the laboratory and in the hazardous waste storage area.

i. Failed to train employees to perform their duties in a way that ensured

compliance with the RCRA regulations.

j. Had an area directly east of the hazardous waste storage area where a coating of material was floating on the storm water at the location; the area measured approximately 25' x 75'. This was a site of a previous facility spill of C-14 alkyl dimethylamine.

38. On or about May 15, 2014, IEPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

39. On or about September 26, 2014, Respondent submitted to IEPA information in response to the Notice of Violation.

40. On or about October 20, 2014, IEPA referred civil enforcement of this matter to U.S. EPA in accordance with the IEPA, Bureau of Land, Enforcement Management System procedures document.

41. On or about December 11, 2014, EPA mailed an information request to Respondent.

42. On or about January 30, 2015, Respondent provided a reply to U.S. EPA's December 11, 2014 information request (Reply).

43. The Reply included documents that U.S. EPA titled: "The BY04, Inventory and Waste Shipments Inventory, Document 1" and "The BY04, Inventory and Waste Shipments Inventory, Document 2."

44. In the Reply, Respondent also stated that:

a. "Generally, drums and totes of waste methanol and miscellaneous hazardous wastes, including flammable liquids, alcohols, amines, acids and bases, are accumulated in Bays 3 and 4."

b. "The predominant RCRA hazardous waste codes for waste generated on-site are F003, D001, and D002."

c. “Five 55-gallon drums were used to empty the receiving vessel and moved to the RCRA 90 day accumulation area in 4/9/2013” and, “[b]ased on process data collected at the time of the distillation, compositionally the containers contained 75% IPA and 25% DMAPA.”

d. “The fiberglass insulation removed was collected in eleven (11) 55-gallon drums and marked for hazardous waste disposal and moved to the RCRA 90 day accumulation area on 9/27/2013.”

e. “For many of the drums of material on-site as of April 29, 2014, for instance, the dates that the material in the drums were deemed hazardous waste and moved to Bays 3 and 4 are currently unknown.”

45. In the Reply, Respondent also supplied data that indicated that there were, at the time of the inspection, approximately one hundred and twenty-two 55-gallon containers, four 15 gallon containers, three 5 gallon containers, and nineteen 550-gallon totes containing solid waste in its hazardous waste storage area, or 148 containers.

46. In the Reply Respondent also identified approximately 55 containers that were present at the time of the inspection with their respective contents and accumulation start dates if known, and the disposition of the material in the containers. Respondent disposed of these materials at a hazardous waste treatment, storage or disposal facility (TSDF).

47. In the Reply Respondent also identified approximately 30 containers that were present at the time of the inspection, consisting of “unknown” wastes with unknown accumulation start dates that Respondent shipped to a TSDF using manifests with the numbers 007789076FLE, which the generator representative signed on “10/10/14”; 007789077FLE, which the generator representative signed on “10/10/14”; and 008146387FLE, which the generator representative signed on “11/26/14.”

48. In the Reply Respondent also supplied data that indicated that the following hazardous wastes were present at the time of the IEPA inspection and were stored at the facility in the hazardous waste storage area for over 90 days:

a. "Cortrol IS 102 and Water," two 55-gallon containers, stored for approximately eight months prior to disposal at a TSDF.

b. "Insulation + MCA," eleven 55-gallon containers, stored for approximately 12 months prior to disposal at a TSDF.

c. "IPA mixed with Recov DMPA," five 55-gallon containers, stored for approximately 17 months prior to disposal at a TSDF.

d. "Waste Fentamine DMA 1495," one 55-gallon container, stored for approximately 5 months prior to disposal at a TSDF.

49. Respondent stored the hazardous wastes referred to in paragraphs 22 and 44 through 48 in its hazardous waste storage area, also known as its hazardous waste accumulation area, described in paragraph 22 prior to shipment for disposal.

50. Respondent disposed of the materials referred to in paragraphs 22 and 44 through 48 as hazardous waste.

Count 1: Failure to Conduct Hazardous Waste Determinations or Retain Determination

Records

51. Complainant incorporates paragraphs 1 through 50 of this CAFO as though set forth in this paragraph.

52. Pursuant to 35 IAC § 722.111 and 40 C.F.R. § 262.11, a person who generates a solid waste must determine if that waste is a hazardous waste.

53. After the IEPA inspection, Respondent provided the document U.S. EPA titled “BY04, Waste Shipments Inventory and Waste Storage Area Inventory, Document 2” to U.S. EPA.

54. The document “BY04, Inventory and Waste Shipments Inventory, Document 2” used the term “unknown” to identify the contents of 48 of the containers referred to in paragraphs 43 and 44.

55. The document “BY04, Inventory and Waste Shipments Inventory, Document 2, identified 17 containers of solid wastes by a label on each container referred to in paragraphs 43 and 44.

56. After the IEPA inspection, Respondent determined that approximately 30 of the 65 containers referred to in paragraphs 44 through 48 contained hazardous waste.

57. Because Respondent did not know the contents of 48 containers at the time of the inspection and knew the contents of 17 containers were solid wastes, but only conducted hazardous waste determinations in response to the IEPA inspection and Notice of Violation, Respondent was in violation of 35 IAC § 722.111.

Count 2: Storage of Hazardous Waste without a Permit or Interim Status

58. Complainant incorporates paragraphs 1 through 57 of this CAFO as though set forth in this paragraph.

59. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

60. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to

certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.134 including, but not limited to, requirements for owners and operators in 35 IAC § 725.

61. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC § 724 or 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121; unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

62. At all times relevant to this CAFO, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

Hazardous Waste Storage

63. Respondent stored approximately nineteen containers of hazardous waste in its hazardous waste storage area for over 90 days.

Hazardous Waste Permit Exemption Conditions

64. The failure to comply with some of the conditions of 35 IAC § 722.134 subjects the generator of hazardous waste to the requirements 35 IAC § 724 or 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

Failure to mark or label with the words, "Hazardous Waste"

65. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must label or mark each container holding hazardous waste clearly with the words "Hazardous Waste." See 35 IAC § 722.134(a)(3).

66. At the time of the inspection, Respondent stored hazardous waste in containers without labeling or marking each container with the words “Hazardous Waste,” and without obtaining or applying for a permit.

Failure to mark or label with the accumulation start date

67. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must mark each container with an accumulation start date. See 35 IAC § 722.134(a)(2).

68. At the time of the inspection, Respondent stored hazardous waste in containers without marking each container with the accumulation start date, and without obtaining or applying for a permit.

Failure to maintain aisle space

69. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must maintain aisle space. See 35 IAC §§ 722.134(a)(4) and 725.135.

70. At the time of the inspection, Respondent stored hazardous waste in containers without maintaining aisle space, and without obtaining or applying for a permit.

Failure to conduct weekly inspections

71. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must conduct weekly inspections. See 35 IAC §§ 722.134(a)(4) and 725.274.

72. At the time of the inspection, Respondent stored hazardous waste in containers without conducting weekly inspections, and without obtaining or applying for a permit.

Failure to train employees

73. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must train employees in a way that teaches them to perform their duties that ensures the facilities compliance with the general facility standards. See 35 IAC §§ 722.134(a)(4) and 725.116(a).

74. At the time of the inspection, Respondent failed to train its employees in a way that taught them to perform their duties to ensure the facilities compliance with the general facility standards.

Requirement to obtain permit or interim status

75. Accordingly, Respondent failed to satisfy all of the conditions for maintaining its exemption from the requirement that it have an operating permit or interim status.

76. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.134, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

77. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

Civil Penalty

78. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$450,000. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements and Respondent's agreement to perform two supplemental environmental projects. Complainant also considered U.S. EPA's *RCRA Civil*

Penalty Policy, dated June 23, 2003.

79. Within 30 days after the effective date of this CAFO, Respondent must pay a \$200,000 civil penalty for the RCRA violations. Respondent must pay the penalty by Automated Clearinghouse (ACH), as follows:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, D.C. 20074
Contact: Jesse White
301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Daniel Chachakis (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John P. Steketee (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

80. This civil penalty is not deductible for federal tax purposes.

81. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1).

Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

82. Respondent must complete two supplemental environmental projects (SEP 1 and SEP 2) designed to protect the environment and public health by:

a. SEP 1: Improving containment by enclosing the less-than 90-day hazardous waste storage area with four walls and a roof. This improvement will protect the accumulated waste containers and labels from erosion due to ice, snow, wind, rain and UV.

b. SEP 2: Converting an existing 10,000 gallon storage tank into a less-than 90-day hazardous waste storage tank system for waste methanol accumulation. This improvement will substantially reduce the risk of accidental releases during waste transfer.

83. At its University Park facility, Respondent must complete the SEPs, as follows:

a. SEP 1: Within nine months after the signing of this CAFO, enclose the less-than 90-day hazardous waste storage area with four walls and a roof. The new building must meet all State of Illinois building and fire codes for the storage of hazardous materials.

b. SEP 2: Within nine months after the signing of this CAFO, convert an existing 10,000 gallon storage tank into a less-than 90-day hazardous waste storage tank system for waste methanol accumulation by sealing the tank dike seam between the vertical and horizontal members, installing transfer piping, conducting mechanical integrity inspections, and insuring that the tank meets all applicable state and federal hazardous waste storage tank and tank system regulations. This includes, but is not limited to, receiving certification prior to adding waste

methanol to the tank system, including the tank system in the hazardous waste training program, establishing an inspection schedule for the system, verifying the application of 40 CFR Subparts AA, BB, and CC, and adding the system to the facility contingency plan.

84. Respondent must spend at least \$250,000 for the SEPs as described in paragraph 82.

85. Respondent certifies that it is not required to perform or develop the SEPs by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

86. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

87. Respondent must submit a SEP completion report to U.S. EPA within thirty (30) days of completing both SEPs (unless extended pursuant to the provisions of paragraph 96). This report must contain the following information:

- a. Detailed description of the SEPs as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEPs documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEPs in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEPs (quantify the benefits and pollution reductions, if feasible).

88. Respondent must submit all notices and reports required by this CAFO by first class mail to Daniel Chachakis of the RCRA Branch.

89. In each report that Respondent submits as provided by this CAFO, it must certify

that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

90. Within ninety (90) days following receipt of the SEP completion report described in paragraph 87, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report.
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 92.

91. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten (10) days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEPs as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 92, below.

92. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 84, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEPs and the amount set forth in paragraph 84.
- b. If Respondent has completed the SEPs, but the SEPs are not satisfactory, Respondent must pay \$200,000, in addition to any penalty required under

subparagraph a, above.

- c. If Respondent halts or abandons work on the SEPs, Respondent must pay a stipulated penalty of \$200,000, in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEPs or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 83 for implementing the SEPs, or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 through 30 th day
\$300	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

93. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEPs will bind Respondent, subject to the dispute resolution provisions of paragraph 91.

94. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 79, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

95. Any public statement that Respondent makes referring to the SEP must include the following language, "Solvay USA Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Solvay USA Inc. for violations of the Resource Conservation and Recovery Act."

96. If an event occurs which causes or may cause a delay in completing the SEPs as required by this CAFO:

- a. Respondent must notify the U.S. EPA in writing within ten days after learning

of an event which caused or may cause a delay in completing the SEPs. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEPs.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEPs, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If the U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEPs, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEPs will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEPs. Increased costs for completing the SEPs will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

97. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEPs under the terms of this CAFO.

98. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

General Provisions

99. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

100. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

101. This CAFO does not affect Respondent's responsibility to comply with RCRA and

other applicable federal, state, local laws or permits.

102. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, the U.S. EPA's RCRA Civil Penalty Policy, and the U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

103. The terms of this CAFO bind Respondent, its successors, and assigns.


104. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

105. Each party agrees to bear its own costs and attorney's fees in this action.

106. This CAFO constitutes the entire agreement between the parties.

Solvay USA Inc., Respondent

1 February 2016
Date


Mr. Ronald Lehman
Novacare Business Unit Leader

United States Environmental Protection Agency, Complainant

2/22/2016
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Solvay USA Inc.
Docket No. RCRA-05-2016-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/25/18

Date



Robert A. Kaplan
Acting Regional Administrator

Consent Agreement and Final Order
In the matter of: Solvay USA Inc.
Docket Number: **RCRA-05-2016-0007**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **RCRA-05-2016-0007**, which was filed on 3/4/2016, in the following manner to the following addressees:

Copy by mail: Ronald Lehman
Novacare Business Unit Leader
Solvay USA Inc.
24601 Governors Highway
University Park, Illinois 60484

Copy by e-mail to
Attorney for Respondent: Eric E. Boyd
ebpud@thompsoncoburn.com

Copy by email to
Attorney for Complainant: John P. Stekette
stekette.john@epa.gov

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: March 4, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

Certified Mail Receipt Number: 7009 1680 0000 7648 7931