

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,**

**NO. AQB UNI-37030-1601 (NOV)**

**UNIVAR USA INC.,  
Respondent.**

---

**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and Respondent, Univar USA Inc. (“Respondent”) (collectively, the “Parties”), to resolve alleged statutory, regulatory, and permit violations by Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to -17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality NSR Permit Number 6896 (“Permit”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. Respondent is doing business in New Mexico at the Farmington Branch (“Facility”), located in San Juan County, New Mexico. The Facility is a chemical storage and distribution facility.

**B. HISTORY AND ALLEGED VIOLATIONS**

3. Air quality regulation 20.2.72.200.A NMAC provides in relevant part, “Permits must be obtained from the department by: (1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review.”

4. On December 14, 2016, the Bureau ruled a permit application complete that was submitted by Respondent for the Facility. In the application, the total Volatile Organic Compound ("VOC") Maximum Emissions were listed as 31.15 tons per year for the facility. The facility is existing, has a stated emission rate higher than the 25 tpy threshold, and had not obtained a Construction Permit prior to submission of this application. Because the Maximum Facility Emissions exceeded thresholds contained in 20.2.72.200 NMAC, the facility was operating without a Construction Permit.

5. Air quality regulation 20.2.70.7.R NMAC provides in relevant part, “ ‘Major source’ means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all

have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following:

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. ”

6. On November 18, 2016, the Bureau received a permit application for Univar for the Facility. The application was ruled complete on December 14, 2016. The application represented the Facility as an existing source and that it had not been issued any type of permit from the Bureau (Section 1-B). The application listed the maximum Hazardous Air Pollutant (“HAP”) emissions as 28.48 ton/year (Section 6, Table 1B), entirely consisting of methanol emissions. Because the facility emission represented by Univar in the application exceeded the applicability thresholds contained in 20.2.70 NMAC, the facility was operating without an Operating Permit.

7. On February 21, 2017, the Bureau issued to Respondent Notice of Violation UNI-37030-1601 (“NOV”), alleging two (2) violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to obtain a construction permit, which is a violation of 20.2.72.200.A NMAC; and 2) failure to obtain an operating permit, which is a violation of 20.2.70.7.R NMAC.

8. The NOV included a Corrective Action Verification (“CAV”) requiring Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

9. On March 22, 2017, the Bureau received the CAV from Respondent. The CAV was determined to be satisfactory by the Bureau on March 23, 2017.

10. The Parties have engaged in settlement discussions to resolve the NOV without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

11. Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations in the NOV.

12. The Parties admit jurisdiction and consent to the relief specified herein.

### **B. CIVIL PENALTY**

13. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent’s good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$36,615.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

14. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505

15. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against Respondent for the failure to make timely or complete payment.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. RESERVATION OF RIGHTS AND DEFENSES**

16. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

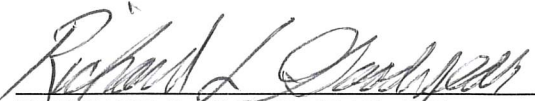
#### **B. MUTUAL RELEASE**

17. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

#### **C. WAIVER OF STATE LIABILITY**


18. Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondent's performance of any obligation under this Final Order.

NEW MEXICO ENVIRONMENT DEPARTMENT

By:   
RICHARD L. GOODYEAR, P.E.  
DIRECTOR

Date: 17 Oct 2017

UNIVAR USA INC

By:   
Print Name: Katie Birge  
Print Title: Director Environmental Compliance

Date: 10/03/2017

**STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and Respondent Univar USA Inc., is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

  
\_\_\_\_\_  
**BUTCH TONGATE**  
**SECRETARY**  
**ENVIRONMENT DEPARTMENT**

Date: 10/18/17