



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

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

Ms. Susanne Vasic
Senior Corporate Counsel
Univar Solutions USA, Incorporated
3075 Highland Parkway, # 200
Downers Grove, Illinois 60515
susanne.vasic@UnivarSolutions.com

Re: Notice of Potential Violation and Opportunity to Confer
Compliance Evaluation Inspection Report and Description of Areas of Concern
Univar Solutions USA, Inc.
Facility ID OHR000162800
Dublin, Ohio

Dear Ms. Vasic:

On December 15, 2020 and March 22, 2021, the U.S. Environmental Protection Agency conducted Resource Conservation and Recovery Act (RCRA) Non-financial Record Reviews (NRRs) of the Univar Solutions USA, Inc., ("Univar" or "you") facility located in Dublin, Ohio. EPA also issued a Request for Information (RFI) to Univar on February 18, 2021. The purpose of the NRRs and the RFI was to evaluate Univar's compliance with certain provisions of RCRA and its implementing regulations related to the generation, treatment and storage of hazardous waste. In the RFI, EPA inquired about Nexeo Solutions ("Nexeo") because Univar acquired Nexeo and its assets on March 1, 2019 and is therefore liable for Nexeo's violations of RCRA and its regulations.

Information currently available to EPA suggests that Univar may be in violation of RCRA. By this letter, EPA is extending to you an opportunity to advise the Agency, in person or in writing, of any further information EPA should consider with respect to the areas of concern.

During the NRRs, EPA observed several areas of concern, described below. The description of the areas of concern is not a final determination regarding Univar's compliance with RCRA. EPA requests that you voluntarily submit a response in writing to us no later than 30 calendar days after receipt of this letter documenting the actions, if any, which you have taken since replying to the RFI to address the areas of concern described below or demonstrating why the areas should not be of concern. After your receipt of this letter and, if applicable, review of your response, EPA will notify you of any further action.

Areas of Concern

During the NRRs, EPA observed the following areas of concern:

1. Notification of Change of Hazardous Waste Activity

Pursuant to Ohio Admin. Code §§ 3745-51-05(C) and (D), a generator must determine the quantity of hazardous waste generated per month, so as to allow the generator to determine the applicability of the provisions of Ohio Admin. Code §§ 3745-52 *et seq.*, that are dependent on quantity generated per month. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), generators are required to file, with an authorized State, subsequent notifications which include the types of wastes handled and the type of hazardous waste activity (*e.g.*, change to Large Quantity Generator status). Section 3010(a) of RCRA is implemented through EPA Form 8700-12 (OMB 2050-0024), which requires notification if, among other things, a generator's hazardous waste activity changes to Large Quantity Generator status.

From at least 2017 through the present, neither Univar nor Nexeo submitted a subsequent notification of the change of the facility's type of hazardous waste activity to Large Quantity Generator status in relevant months, in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). Univar/Nexeo last notified as a Very Small Quantity Generator on November 13, 2012.

2. Hazardous Waste Recordkeeping and Reporting

Under Ohio Admin. Code § 3745-52-41(A), a generator who is a large quantity generator for at least one month of an odd-numbered year, who ships any hazardous waste off-site must prepare and submit the hazardous waste biennial report to the Ohio Environmental Protection Agency by March 1 of each even-numbered year and shall cover generator activities during the previous calendar year. Under Ohio Admin Code § 3745-50-10 (L)(5)(a), a Large Quantity Generator is a generator who generates greater than or equal to one thousand kilograms (twenty-two hundred pounds) of non-acute hazardous waste.

Univar assumed Large Quantity Generator responsibilities by importing and directing manifested non-acute hazardous waste (specifically, waste flammable liquids/bulk mixed solvents with waste codes D001, D002, F003, F005) in amounts greater than 1,000 kg per month. This waste came from PharmaChem Technologies, G.B., LTD ("PharmaChem"), located at West Sunrise Highway, F-42430, Freeport, Bahamas, and was for bound for Geocycle, LLC/Holcim, located at 2175 Gardner Boulevard, Holly Hill, South Carolina (SCD003368891) as the designated Treatment, Storage and Disposal Facility.

During 2017, the E-Manifest System indicated that Nexeo shipped approximately 856 tons of non-acute hazardous waste that carried any of the following waste codes D001, D002, D007, D011, D018, F003, F005. Nexeo did not prepare and submit a report to the Ohio Environmental Protection Agency by March 1, 2018 for the preceding calendar

year. Thus, Nexeo violated Ohio Admin. Code § 3745-52-41(A) by generating more than 1,000 kg of hazardous waste and failing to file the required biennial report.

During 2019, the E-Manifest System indicated that Univar/Nexeo shipped approximately 450 tons of hazardous waste that carried any of the following waste codes: D001, D002, D007, D011, D018, F003, F005. Univar did not submit a report to the Ohio Environmental Protection Agency by March 1, 2020 for the preceding calendar year. Thus, Univar violated Ohio Admin. Code § 3745-52-41(A) by generating more than 1,000 kg of hazardous waste and failing to file the required biennial report.

3. Regulations for Imports of Hazardous Waste

Under 40 C.F.R. § 262.84(a)(1), importers of shipments covered under a consent from EPA to the country of export issued before December 31, 2016, are subject to that approval and the requirements that existed at the time of that approval until the approval period expires. Otherwise, any other person who imports hazardous waste from a foreign country into the United States must comply with the requirements of 40 C.F.R. Part 262 and the special requirements of this 40 C.F.R. Part 262, Subpart H. Additionally, 40 C.F.R. § 262.84(a)(2) requires that in cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with 40 C.F.R. § 262.84(b).

The Hazardous Waste Export-Import Revisions final rule went into effect on December 31, 2016. 81 Fed. Reg. 85,696 (Nov. 28, 2016). As of that date, any import not occurring under the terms of a consent issued prior to December 31, 2016 was required to comply with all the applicable import requirements in 40 C.F.R. Parts 262 and 264. EPA has found no evidence of any EPA-issued consent for any shipment from PharmaChem in the Bahamas prior to the consents issued in 2021. Therefore, Univar and Nexeo, as importers, were required to comply with 40 C.F.R. Part 262 and the special requirements of this 40 C.F.R. Part 262, Subpart H.

EPA has no record of any notification from PharmaChem or consent of the export given by the United States prior to the shipments of waste referred to in Area of Concern 2 above. Therefore, Nexeo and Univar, as importers, were likely required to comply with 40 C.F.R. § 262.84(b).

40 C.F.R. § 262.84(b) requires importers to provide notification to EPA of the proposed transboundary movement of hazardous waste at least 60 days before the first shipment is expected to depart the country of export. Nexeo and Univar did not provide notification of the shipments of hazardous waste from PharmaChem in the Bahamas prior to the first shipment, likely in violation of 40 C.F.R. § 262.84(b).

4. Hazardous Waste Manifests Instructions for Import Shipments

Under 40 C.F.R. § 262.84(c)(1), an importer of hazardous waste must meet all the requirements of 40 C.F.R. § 262.20 for the manifest with the following exceptions:

- In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used, 40 C.F.R. § 262.84(c)(1)(i);
- In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter, 40 C.F.R. § 262.84(c)(1)(ii);
- In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States, 40 C.F.R. § 262.84(c)(3).

Univar and Nexeo failed to comply with the above-listed manifest requirements on at least forty-five (45) manifests, from July 1, 2018 through March 12, 2020, for waste flammable liquids/bulk mixed solvents/ D001, F003, F005 hazardous waste shipped which also constituted imports of hazardous waste destined for Geocycle/Holcim (SCD003368891).

5. Movement Document Requirements for Import Shipments

Under 40 C.F.R. § 262.84(d)(1), the importer must ensure that a movement document meeting the conditions of 40 C.F.R. § 262.84(d)(2) accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in 40 C.F.R. §§ 262.84(d)(1)(i) and (ii).

For 45 import shipments of waste manifested with Univar and Nexeo's EPA ID Number destined for Geocycle/Holcim (SCD003368891) from at least December 31, 2017 through March 12, 2020, there were no movement documents accompanied with the transboundary shipments of hazardous waste. Univar and Nexeo therefore violated 40 C.F.R. § 262.84(d)(1) by failing to ensure that a movement document meeting the conditions in 40 C.F.R. § 262.84(d)(2) accompanied each transboundary movement of hazardous waste.

6. Import Contract Requirements

Under 40 C.F.R. § 262.84(f)(1), imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. The requirements in 40 C.F.R. § 262.84 (f)(2)-(8) must also be followed.

In the RFI EPA issued to Univar on February 18, 2021, EPA requested that Univar provide “[a]ny other recordkeeping documentation required by 40 C.F.R. §§ 262.40 and 262.84(h).” 40 C.F.R. § 262.84(h)(1)(ii) requires that the importer shall keep and provide to EPA upon request, “[a] copy of each contract or equivalent arrangement established per [40 C.F.R. § 262.84(f)] for at least three (3) years from the expiration date of the contract or equivalent arrangement.” In response to EPA’s RFI, Univar failed to provide EPA with a contract or equivalent arrangement required under 40 C.F.R. § 262.84(f)(1). Thus, EPA has reason to believe that Univar/Nexeo failed to document and execute a valid written contract or chain of contracts, between PharmaChem, itself, and Geocycle/Holcim (SCD003368891 receiving facility) for at least 45 import shipments of waste flammable liquids/ bulk mixed solvents/ D001, F003, F005 hazardous waste destined for Geocycle/Holcim (SCD003368891) from at least December 31, 2017 through March 12, 2020, in violation of 40 C.F.R. § 262.84(f).

7. Recordkeeping

Under 40 C.F.R. § 262.84(h)(1), the importer shall keep the following records and provide them to EPA or authorized state personnel upon request:

- A copy of each notification that the importer sends to EPA under 40 C.F.R. § 262.84(b)(1) and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter. 40 C.F.R. § 262.84(h)(1)(i);
- A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement. 40 C.F.R. § 262.84(h)(1)(ii);

Further, importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer’s or receiving facility’s account on EPA’s WIETS, or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector, 40 C.F.R. § 262.84(h)(3).

In the RFI, EPA requested that Univar provide any documents to indicate compliance with reporting requirements for the hazardous waste identified in the RFI, including pursuant to 40 C.F.R. § 262.84(h). Univar failed to provide EPA any documentation required per 40 C.F.R. § 262.84(h) for at least 45 import shipments of waste flammable liquids, bulk mixed solvents D001, F003, F005 hazardous waste destined for Geocycle/Holcim (SCD003368891) from at least December 31, 2017 through March 12, 2020. Thus, Univar has failed to comply with 40 C.F.R. § 262.84(h).

Actions Requested

By no later than 30 calendar days from the date of this letter, please provide information documenting the actions, if any, which you have taken since Univar's response to EPA's RFI to address the identified areas of concern, as well as any additional information requested.

If you are unable to respond in a timely fashion because of impacts related to the COVID-19 pandemic, please submit a written extension request via email to Bryan Gangwisch, gangwisch.bryan@epa.gov, explaining the specific impacts on your ability to respond.

Please send all reports requested by this letter by electronic mail to:

r5lecab@epa.gov

and

gangwisch.bryan@epa.gov

The subject line of all email correspondence must include OHR000162800. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. If you are unable to send a response to these email addresses due to email size restrictions or other problems, contact Bryan Gangwisch to make additional arrangements for transmission of the response.

This letter is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks information from specific individuals or entities as part of an administrative investigation. You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to EPA in response to this letter. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice.

The EPA contact in this matter is Bryan Gangwisch. You may reach him at (312) 886-0989 if you have additional questions. Thank you for your prompt attention to these concerns and your efforts to protect human health and the environment.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Mitch Mathews, Ohio EPA, mitchell.mathews@epa.ohio.gov

Michael Scanlon, Barnes & Thornburg, michael.scanlon@btlaw.com