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REGIONAL HEARING CLERK  
EPA REGION VI

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**1201 Elm Street, Suite 500  
Dallas, Texas 75270**

**In the Matter of**

**Union Carbide Corp.,  
Seadrift, Texas**

**Respondent.**

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**Docket No. CAA-06-2022-3374**

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Union Carbide Corp. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Furthermore, this Consent Agreement and Final Order 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 violations.

**Parties**

3. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Union Carbide Corp., a corporation registered in the state of Delaware and conducting business in the state of Texas.

**Statutory and Regulatory Background**

5. 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). The objective of Section 112(r) is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. 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). 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, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. 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 the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. 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 code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. 1910.119.

11. 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. 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 these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$51,796 for violations that occur after November 2, 2015, and are assessed after January 12, 2022.

#### **Definitions**

12. 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.

13. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “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)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3 defines “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.

15. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at

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.

16. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” 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.

17. The regulation at 40 C.F.R. § 68.3 defines “process” 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.

18. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

#### **EPA Findings of Fact and Conclusions of Law**

19. Respondent is, 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).

20. Respondent is the owner and operator of a facility located at: 7501 State Highway 185, Seadrift, Texas 77983 (the “Facility”).

21. On September 17, 2021, there was an incident at the Facility that resulted in an accidental release (the “Incident”), which was duly reported to the National Response Center. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA requested on March 16, 2022, and Respondent provided, documentation and information concerning the Incident and

Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the "Investigation").

22. On August 5, 2022, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On August 23, 2022, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA's position concerning Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

24. Respondent has an Ethanolamines unit used for chemical manufacturing purposes at the Facility, meeting the definition of "process", as defined by 40 C.F.R. § 68.3.

25. Anhydrous ammonia is a "regulated substance" pursuant to Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and the regulation at 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

26. Respondent has greater than a threshold quantity of anhydrous ammonia, in a process at the Facility, meeting the definition of "covered process" as defined by 40 C.F.R. § 68.3.

27. From the time Respondent first had on-site greater than a threshold quantity of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of



anhydrous ammonia in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements, because, pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System 325199.

**EPA Findings of Violation**

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

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

**Count 1 – Quality Assurance**

31. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. §§ 68.73(f)(2) & (3), appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions. The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

32. Respondent's response to follow-up questions provided on June 16, 2022, regarding the September 17, 2021, incident, which resulted in a release of 275 pounds of anhydrous ammonia to the atmosphere, identified the root cause as "poor craftsmanship of pilot PSV (pressure safety valve) assembly at vendor" and identified a contributing cause as "no quality control plan existed for this external repair."

33. Respondent's failure to conduct quality assurance checks and inspections or

establish a quality control plan for the external repair of the PSV described in Para. 32 above pursuant to 40 C.F.R. §§ 68.73(f)(2) & (3), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

**CONSENT AGREEMENT**

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

**Penalty Payment**

37. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of thirty-six thousand two hundred and fifty dollars (\$36,250), as set



forth below.

38. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

39. A copy of the check or other information confirming payment shall simultaneously be sent by electronic email to the following:

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102  
[vaughn.lorena@epa.gov](mailto:vaughn.lorena@epa.gov); and

Carlos Flores  
Enforcement and Compliance Assurance Division  
Air Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDAC)  
Dallas, Texas 75270-2101  
[flores.carlos@epa.gov](mailto:flores.carlos@epa.gov)

40. 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).

**Effect of Settlement and Reservation of Rights**

41. 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 or any other applicable law.

42. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

43. 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).

44. 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 regulations promulgated thereunder.

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

**General Provisions**

46. 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.

47. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

48. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

49. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or 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.

50. 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: [George.Elizabeth.A@epa.gov](mailto:George.Elizabeth.A@epa.gov)

To Respondent: [FQFalcon@dow.com](mailto:FQFalcon@dow.com)

**RESPONDENT:  
UNION CARBIDE CORP.**

Date: 9/7/2022

Brooke M Barnes  
Signature

BROOKE M BARNES  
Print Name

RESPONSIBLE CARE LEADER  
Title SEADRIFT OPERATIONS

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Cheryl T. Seager

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SEAGER  
Date: 2022.09.08 08:24:24  
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Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS  
RUCKI

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
0.9.2342.19200300.100.1.1+68001003655804  
Date: 2022.09.08.10:04:29 -0400

\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

[George.Elizabeth.A@epa.gov](mailto:George.Elizabeth.A@epa.gov)

Copy via Email to Respondent:

[cmoreno3@dow.com](mailto:cmoreno3@dow.com)

Carlos Moreno  
Senior Counsel  
U.S. Operations, Regulatory & North America Legal Department  
Dow | APB Building  
332 SH 332 E, 4A016  
Lake Jackson, Texas 77566

[FQFalcon@dow.com](mailto:FQFalcon@dow.com)

Fran Quinlan Falcon  
Texas Regional Environmental Leader  
The Dow Chemical Company  
332 SH 332 E, LJ APB 2A064  
Lake Jackson, TX 77566

Copy via Email to Regional Hearing Clerk:

[Vaughn.Lorena@epa.gov](mailto:Vaughn.Lorena@epa.gov)

ELIZABETH  
GEORGE

Digitally signed by ELIZABETH  
GEORGE  
Date: 2022.09.08 08:41:41 -05'00'

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Signed  
Office of Regional Counsel  
U.S. EPA, Region 6