

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

In the Matter of:	:	
	:	
Union Carbide Corporation	:	U.S. EPA Docket No. CWA-03-2021-0071
437 MacCorkle Avenue	:	
South Charleston, WV 23503	:	Proceeding under Section 309(g)
	:	of the Clean Water Act
Respondent.	:	
	:	
Institute, West Virginia Facility	:	
US Route 25, Institute, West Virginia	:	
25112	:	
Facility.	:	
	:	
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Union Carbide Corporation (“Respondent” or “UCC”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), and 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. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order” or “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the Act for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. The Clean Water Act was enacted “to restore and maintain the chemical, physical, and biological integrity of the nation's waters.” 33 U.S.C. § 1251(a).
14. To accomplish those objectives, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” to waters of the United States,

- except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require an “owner or operator of any point source” to provide information required when EPA is “determining whether any person is in violation of any...limitation, prohibition or effluent standard, pretreatment standard, or standard of performance.” 33 U.S.C. § 1318(a).
 16. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as, *inter alia*, an “individual, corporation, partnership, [or] association.”
 17. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.”
 18. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” as a wide range of materials, including solid waste, rock, sand, and industrial waste, discharged into water.
 19. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged....”
 20. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”
 21. The receiving waters identified herein are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
 22. Complainant alleges that Respondent has discharged pollutants from a point source into waters of the United States at the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
 23. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), EPA has the authority to issue an NPDES permit “for the discharge of any pollutant” to waters of the United States if “such discharge will meet . . . all applicable requirements” of the CWA and other conditions that the permitting authority determines necessary to implement the CWA. Permits regulating the discharges of pollutants (other than dredge and fill material) to waters of the United States are issued under the NPDES permit program.
 24. A state may administer its own NPDES permit program with EPA’s approval. *See* CWA Section 402(b), 33 U.S.C. § 1342(b).
 25. The State of West Virginia has been authorized by EPA to administer an NPDES program for regulating the discharges of pollutants to navigable waters within the state’s jurisdiction. 40 Fed. Reg. 22363-01 (May 24, 1982). The West Virginia Department of

- Environmental Protection (“WVDEP”) is authorized to issue NPDES permits in accordance with the West Virginia Water Pollution Control Act (“WPCA”). W. Va. Code § 22-11-8.
26. EPA’s approval of West Virginia’s programs does not affect its authority to enforce the CWA or to enforce a state-issued NPDES permit. *See* 33 U.S.C. § 1342(i).
 27. A “permit” is “an authorization, license, or equivalent control document issued by EPA or an ‘approved State’ to implement the requirements of [the CWA].” 40 C.F.R. § 122.2 (definitions).
 28. An NPDES permit typically contains, among other things, effluent limitations, water quality standards, monitoring and reporting requirements, best management practices (“BMPs”) and other standard conditions applicable to all permits, and special conditions where appropriate. *See* 40 C.F.R. §§ 122.41-122.50 (NPDES permit conditions).
 29. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water dischargers are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
 30. WVDEP issued NPDES Permit Number WV0000086 to Respondent (“UCCI Permit”) in November 2015 authorizing the discharge of pollutants from the Facility to navigable waters in compliance with the UCCI Permit terms. In November 2019, following Respondent’s sale of the Facility, WVDEP transferred NPDES Permit Number WV0000086 from Respondent to the new Facility owner. Respondent no longer owns the Facility or holds the UCCI Permit. At all times relevant to this Consent Agreement (from November 2015 until November 2019 and hereafter “the Relevant Time Period”) the Respondent’s Facility was subject to the UCCI Permit.
 31. Section 402(p) of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to comply with all applicable provisions of Section 301 of the CWA, 33 U.S.C. § 1311.
 32. EPA or authorized states may issue individual permits for a facility or general permits covering one or more categories of stormwater discharges. *See* 40 C.F.R. § 122.28. Pursuant to 40 C.F.R. § 123.25, any authorized state permitting program may include provisions for general permits.
 33. Under EPA’s regulations, any person who discharges or who proposes to discharge stormwater associated with industrial activity or small construction activity is required to apply for an individual permit or to seek coverage under a promulgated stormwater general permit. *See* 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, 123.25.
 34. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to assure compliance with

- the requirements of the CWA. 33 U.S.C. § 1342(a)(2); *see also* 33 U.S.C. § 1311.
35. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources. 33 U.S.C. § 1362(11).
 36. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
 37. Upon information and belief, Respondent is a corporation that was the NPDES permittee and an operator at the Facility during the Relevant Time Period.
 38. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
 39. On November 7 and 8, 2017 EPA conducted a CWA inspection of the Facility.
 40. Based on the inspection and based on additional information reviewed by EPA, EPA identified CWA violations of the UCCI Permit, including effluent limit exceedances; violations of UCCI Permit housekeeping requirements; violations of UCCI Permit BMP requirements; unauthorized stormwater discharge violations; and violations of UCCI Permit obligations to implement or maintain stormwater pollution prevention plan (“SWPPP”) requirements.
 41. UCCI Permit Section A required Respondent to monitor and comply with discharge limits for various parameters, including zinc, silver, BOD, pH and fecal coliform. Exceedances of these parameters identified by EPA and resolved by the CAFO are contained in Appendix A.
 42. UCCI Permit Section C requires that the Facility be properly maintained, including maintaining of the Facility grounds. As described below, Respondent failed to maintain the Facility as required by the UCCI Permit.
 43. UCCI Permit Section C requires that BMPs at the Facility be properly implemented and maintained. As described below, Respondent failed to maintain the Facility BMPs as required by the UCCI Permit.
 44. UCCI Permit Section C requires that the SWPPP at the Facility be properly implemented and maintained. As described below, Respondent failed to maintain the Facility SWPPP as required by the UCCI Permit.

Count I: Violations of Effluent Limits

45. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.

46. During the period relevant to this Consent Agreement, Respondent discharged pollutants from point sources in excess of effluent limitations set by Section A of the UCCI Permit into waters of the United States. *See Appendix A.*
47. For each exceedance of an effluent limitation, Respondent is in violation of Sections 301 and 402 of the CWA, 42 U.S.C. §§ 1311 and 1342, for discharging in violation of the conditions and limitations of the applicable NPDES permit issued under Section 402 of the CWA, 42 U.S.C. § 1342.

Count II: Violations of UCCI Permit Section C, Good Housekeeping

48. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
49. Section C.01 of the UCCI Permit required that the permittee shall practice good housekeeping, including maintaining the Facility grounds, ensuring that there are no scattered parts, equipment, debris and that any and all drums shall be either stored in a covered area or kept upon pallets and properly sealed.
50. During the Inspection, the EPA inspectors observed deficiencies in good housekeeping, including, for example, the following:
 - a. Broken pipes, scrap metal, and other discarded material were present on the ground in multiple areas;
 - b. Uncovered dumpsters containing, among other things bags of asbestos;
 - c. Unlabeled garbage bags and fabric totes with warning labels advising against exposure to inclement weather, which were stored uncovered on the eastern perimeter of the Facility;
 - d. A secondary containment basin for an out-of-service onsite fueling station near the former Bayer CropScience powerhouse location that was overflowing its inlet grate with stormwater;
 - e. An inlet on the perimeter of the US Methanol construction area that was clogged with sediment;
 - f. Evidence of erosion was observed in the southern portion of the Catalyst Refiners tenant location; and
 - g. Discarded asphalt material immediately upgradient of the Kanawha River.
51. During the period relevant to this Consent Agreement, Respondent failed to adequately comply with obligations to maintain Facility grounds required by Section C of the UCCI Permit.

52. For each failure to adequately implement UCCI Permit housekeeping conditions, Respondent is in violation of Section 301 of the CWA, 42 U.S.C. § 1311, for violating conditions of the applicable NPDES permit issued under Section 402 of the CWA, 42 U.S.C. § 1342.

Count III: Failure to Properly Implement and Maintain BMP Plan

53. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
54. Section C.07 of the UCCI Permit required that the Respondent implement and maintain, and update as necessary, a BMP Plan as required by the permit during the Relevant Time Period. The BMP Plan is required to identify and control the discharge of oils and the hazardous and toxic substances listed under Sections 307 and 311 of the Clean Water Act. The BMP Plan is required to include a listing of all potential sources of spills or leaks of these materials; a method for containment; a description of training, inspection and security procedures; and emergency response measures to be taken in the event of a discharge to surface waters.
55. During the Inspection, the EPA inspectors observed that the Respondent's BMP Plan was missing certain UCCI Permit-required information and lacking detail in other areas, including:
- a. Identification of oils and the hazardous and toxic substances listed under Sections 307 and 311 of the Clean Water Act – The BMP Plan does not include a complete listing of the substances stored at the Facility;
 - b. A listing of all potential sources of spills or leaks – The BMP Plan does not include a comprehensive listing of all potential sources of spills or leaks; and
 - c. Information not included for tenant sites – Facility representatives stated that UCC does not retain records of the information required in Section C.07 of the Permit for the tenant sites located at the Facility.
56. During the period relevant to this Consent Agreement, Respondent failed to adequately comply with obligations to maintain properly and implement BMPs required by Section C of the UCCI Permit.
57. For each failure to adequately implement UCCI Permit conditions, Respondent is in violation of Section 301 of the CWA, 42 U.S.C. § 1311, for violating conditions of the applicable NPDES permit issued under Section 402 of the CWA, 42 U.S.C. § 1342.

Count IV Failure to Implement and Maintain the SWPPP as Required by the Permit

58. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.

59. Section C.23 of the UCCI Permit required that Respondent implement and maintain (and update as necessary) a SWPPP and that the SWPPP must be prepared in accordance with good engineering practices. The UCCI Permit goes on to require that the SWPPP identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with the industrial activity. In addition, the plan must describe and ensure the implementation of practices which are to be used to reduce the pollutants in stormwater discharges associated with the industrial activity at the facility and to assure compliance with the terms and conditions of this permit.
60. During the Inspection, the EPA inspectors observed that the Facility's SWPPP lacked specific detail and description of the specific implementation of practices which are to be used to reduce potential stormwater pollutants at the Facility. In addition, the SWPPP did not include a site map and the maps for the Facility needed to be updated.
61. During the period relevant to this Consent Agreement, Respondent failed to adequately implement and maintain the SWPPP at Facility grounds as required by Section C of the UCCI Permit.
62. For each failure to adequately implement UCCI Permit conditions, Respondent is in violation of Section 301 of the CWA, 42 U.S.C. § 1311, for violating conditions of the applicable NPDES permit issued under Section 402 of the CWA, 42 U.S.C. § 1342.

Count V: Unauthorized Stormwater Discharges

63. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
64. The Respondent discharged stormwater from the Facility unauthorized by the UCCI Permit into waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, as identified by EPA observations of sediment laden runoff, clogged inlet drains and failed erosion and sedimentation control measures.
65. For each failure to adequately implement UCCI permit conditions, Respondent is in violation of Section 301 of the CWA, 42 U.S.C. § 1311, for violating conditions of the applicable NPDES permit issued under Section 402 of the CWA, 42 U.S.C. § 1342.

CIVIL PENALTY

66. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Seventy-nine thousand dollars (\$79,000)** which Respondent shall be liable to pay in accordance with the terms set forth below.
67. The civil penalty is based on a number of factors, including the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable

requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

68. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CWA-03-2021-0071;
- b. All checks shall be made payable to the "United States Treasury;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Douglas Frankenthaler
Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
Frankenthaler.douglas@epa.gov

69. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

70. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
71. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. 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 effective date of this Consent Agreement and Final Order. 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).
72. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the civil penalty remains unpaid.
73. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
74. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

75. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
76. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information

provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

OTHER APPLICABLE LAWS

77. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

78. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

79. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

80. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

81. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all of EPA's claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Union Carbide Corporation

Date: 3/15/2021

By:



Tim O'Neal
Vice President and Director
West Virginia Operations
Union Carbide Corporation
437 MacCorkle Avenue, SW
South Charleston, WV 25303

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Douglas Frankenthaler
Assistant Regional Counsel
U.S. EPA – Region III

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

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Union Carbide Corporation	:	U.S. EPA Docket No. CWA-03-2021-0071
437 MacCorkle Avenue	:	
South Charleston, WV 23503	:	
	:	Proceeding under Section 309(g)
Respondent.	:	of the Clean Water Act
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Institute, West Virginia Facility	:	
US Route 25, Institute, West Virginia	:	
25112	:	
Facility.	:	
	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Union Carbide Corporation, 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, 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 the statutory factors set forth in Section 309(d) of the Clean Water Act (“CWA”), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309(g) of the CWA, 33 U.S.C. Section 309(g), 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 **SEVENTY-NINE THOUSAND DOLLARS (\$79,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions

of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

Date: _____

By: _____

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